

FRAZIER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, CA. NO.
INCORPORATED 99-371-KAJ
SECURITIES LITIGATION

Wednesday, August 9, 2006

Oral deposition of GARY L. FRAZIER,
was taken pursuant to Notice, at the
offices of SIMPSON THACHER & BARTLETT LLP,
425 Lexington Avenue, New York, NY
10017-3954 on the above date before
DEBRA G. JOHNSON-SPALLONE, CSR, RPR,
Notary Public, and a Federally Approved
Reporter of the United States District
Court commencing at or about 10:40 a.m.

RSA/VERITEXT COURT REPORTING COMPANY
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Page 2

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1 ---
2 (It is stipulated and
3 agreed by and between
4 counsel that sealing and
5 certification of the within
6 deposition be waived; and
7 that all objections, except
8 as to the form of the
9 question, be reserved until
10 the time of trial.)
11 ---

12 GARY L. FRAZIER, after
13 having been first duly sworn
14 as a witness, testified as
15 follows:
16 ---

17 (Whereupon the
18 document was marked, for
19 identification purposes, as
20 Exhibit Number 331.)
21 ---

22 EXAMINATION

23 ---
24 BY MR. COLLINS:

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4 TESTIMONY OF: GARY L. FRAZIER
5 By Mr. Collins. 4

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7
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9 EXHIBITS

10
11 EXHIBIT PAGE
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13
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15 Gary L. Frazier 4
16
17 Exhibit-332 Production Documents 129
18
19 Exhibit-333 Timeline of Events 131
20
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22
23
24

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1 Q. Professor, thank you for 10:34:55AM
2 coming. 10:34:57AM
3 A. Okay. 10:34:57AM
4 Q. You have been deposed in 10:34:58AM
5 other litigation -- 10:35:00AM
6 A. Yes. 10:35:00AM
7 Q. -- correct? 10:35:00AM
8 A. Correct. 10:35:01AM
9 Q. And, in fact, you have given 10:35:01AM
10 testimony both at deposition and otherwise 10:35:04AM
11 on a number of occasions; right? 10:35:06AM
12 A. That's correct. 10:35:08AM
13 Q. Have you ever testified at 10:35:08AM
14 trial? 10:35:09AM
15 A. Yes. 10:35:09AM
16 Q. You have also written 10:35:10AM
17 exclusively also? 10:35:13AM
18 A. To some degree. 10:35:15AM
19 Q. When did somebody first 10:35:16AM
20 contact you with regard to this 10:35:21AM
21 litigation? 10:35:23AM
22 A. July 17th of this year. 10:35:23AM
23 Q. And who was that? 10:35:26AM
24 A. Adele Tooki at Cornerstone 10:35:29AM

2 (Pages 2 to 5)

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1 Well, let us do this 03:26:04PM
 2 MR. GLUCKOW: We have a 03:26:05PM
 3 copy coming, but it's not 03:26:06PM
 4 here yet. 03:26:08PM
 5 MR. COLLINS: That's 03:26:08PM
 6 fine. Let's do this. 03:26:09PM
 7 Let's keep going with 03:26:10PM
 8 the deposition. 03:26:11PM
 9 THE WITNESS: All 03:26:11PM
 10 right. 03:26:11PM
 11 --- 03:26:11PM
 12 BY MR. COLLINS: 03:26:11PM
 13 Q. If any one of the articles 03:26:12PM
 14 in Exhibit-332 comes to mind while we are 03:26:13PM
 15 continuing with the questioning, would you 03:26:16PM
 16 be kind enough to tell me that you just 03:26:21PM
 17 thought of another article that might 03:26:24PM
 18 support your prediction? 03:26:26PM
 19 A. It is unlikely I am going to 03:26:27PM
 20 remember that doing this -- 03:26:30PM
 21 Q. All right. 03:26:31PM
 22 A. -- but sure, I promise. 03:26:32PM
 23 Q. Then we will stop and look 03:26:34PM
 24 at the article you referred to -- 03:26:35PM

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1 A. Yes. 03:26:37PM
 2 Q. -- and we'll show you the 03:26:37PM
 3 documents. 03:26:39PM
 4 Okay. Thank you. 03:26:40PM
 5 Now, paragraph five, the 03:26:41PM
 6 first bullet point on page three; Adams 03:26:53PM
 7 Golf has taken reasonable steps to deal 03:26:57PM
 8 with gray market activity. 03:27:00PM
 9 That is as of the time of 03:27:01PM
 10 the IPO; correct? 03:27:03PM
 11 A. Yes. 03:27:05PM
 12 Q. All right. 03:27:05PM
 13 Now, as of the time of the 03:27:08PM
 14 IPO, was the -- was the jury in on the 03:27:13PM
 15 issue of how well Adams Golf was dealing 03:27:18PM
 16 with gray marketing? 03:27:22PM
 17 That is; to rephrase the 03:27:23PM
 18 question, as of the time of the IPO, 03:27:25PM
 19 wasn't it still possible that Adams could 03:27:28PM
 20 goof it up and fail to deal effectively 03:27:31PM
 21 with ongoing gray market issues? 03:27:34PM
 22 MR. GLUCKOW: Objection. 03:27:36PM
 23 Overbroad, vague and 03:27:38PM
 24 ambiguous. Calls for 03:27:39PM

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1 speculation. 03:27:40PM
 2 You can answer. 03:27:41PM
 3 MR. COLLINS: Let me 03:27:41PM
 4 rephrase it one more time 03:27:42PM
 5 THE WITNESS: All 03:27:43PM
 6 right. 03:27:43PM
 7 --- 03:27:43PM
 8 BY MR. COLLINS: 03:27:43PM
 9 Q. As of the time of the IPO, 03:27:43PM
 10 did the possibility exist that Adams would 03:27:47PM
 11 cease dealing effectively with gray 03:27:51PM
 12 marketing issues? 03:27:55PM
 13 MR. GLUCKOW: Same 03:27:55PM
 14 objections, but you can 03:27:56PM
 15 answer. 03:27:56PM
 16 (Pause) 03:27:56PM
 17 THE WITNESS: I don't 03:28:05PM
 18 believe so. 03:28:05PM
 19 Again, I would -- would 03:28:07PM
 20 go back to the level of gray 03:28:08PM
 21 market activity and the 03:28:09PM
 22 steps the firm had already 03:28:12PM
 23 taken pre-IPO to confront 03:28:13PM
 24 this issue and maintain 03:28:16PM

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1 their -- their relationships 03:28:17PM
 2 with their authorized 03:28:18PM
 3 channel members. 03:28:20PM
 4 So, I believe they took 03:28:21PM
 5 appropriate steps pre-IPO, 03:28:22PM
 6 and I don't believe there 03:28:24PM
 7 was a risk at that time that 03:28:27PM
 8 they ceased being effective 03:28:31PM
 9 in managing the gray 03:28:32PM
 10 marketing activity, because 03:28:34PM
 11 you can effectively manage 03:28:36PM
 12 gray market activity. 03:28:37PM
 13 MR. COLLINS: Ochoa? 03:28:49PM
 14 MR. GLUCKOW: I believe 03:28:50PM
 15 so. 03:28:51PM
 16 MR. KANE: I don't know 03:28:58PM
 17 if this is a copy that we 03:28:58PM
 18 picked up. 03:29:03PM
 19 --- 03:29:03PM
 20 (Discussion held off the record.) 03:29:03PM
 21 --- 03:29:03PM
 22 THE WITNESS: Here we 03:29:18PM
 23 go. 03:29:18PM
 24 --- 03:29:18PM

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something or nothing to 03:23:35PM
 support this, because that 03:23:35PM
 is going to take me awhile? 03:23:37PM
 I will do it if you want me 03:23:38PM
 to do it. 03:23:40PM
 --- 03:23:40PM
 BY MR. COLLINS: 03:23:40PM
 Q. Well, I don't want to keep 03:23:40PM
 you all that long, but you did refer to -- 03:23:42PM
 it would be helpful to know if you had 03:23:46PM
 some support for that prediction. 03:23:48PM
 Even though you backed away 03:23:50PM
 from the prediction a little bit, I would 03:23:52PM
 like to know if you have some support 03:23:53PM
 A. I am going to review 03:23:56PM
 articles. 03:23:57PM
 Q. Is that necessary? 03:23:57PM
 You have to review the 03:23:59PM
 entire article? 03:24:00PM
 A. I am afraid if I just skim 03:24:02PM
 it, I might miss something. 03:24:03PM
 So that the basic premise 03:24:06PM
 would be that; a more well-established, 03:24:07PM
 much larger firm like Callaway at a given 03:24:09PM

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involved in Adams, I would 03:24:47PM
 still make that prediction. 03:24:49PM
 Here it's more just the 03:24:50PM
 issue of absolute size 03:24:51PM
 itself. 03:24:55PM
 MR. GLUCKOW: When you 03:24:56PM
 say "here," you mean that is 03:24:57PM
 what you were looking for? 03:24:57PM
 THE WITNESS: That is 03:24:58PM
 what I was looking for; 03:24:59PM
 correct. 03:25:01PM
 So, definitively to 03:25:01PM
 answer that, it is going to 03:25:03PM
 take some time 03:25:05PM
 I certainly did not 03:25:05PM
 have that opinion coming in 03:25:06PM
 here today. 03:25:07PM
 You asked me the 03:25:07PM
 question. I gave you the 03:25:08PM
 best answer I can. 03:25:09PM
 I can try to read this, 03:25:11PM
 but it is going to take 03:25:12PM
 awhile. 03:25:13PM
 --- 03:25:13PM

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point in time, would have more gray market 03:24:13PM
 sales than a company of the size and 03:24:15PM
 stature of Adams? 03:24:18PM
 Q. Right. 03:24:19PM
 Coupled with the fact that 03:24:20PM
 Adams has higher margins, does that effect 03:24:22PM
 your analysis? 03:24:26PM
 In other words, when you 03:24:28PM
 made your prediction -- 03:24:29PM
 A. Huh-huh. 03:24:29PM
 Q. -- Professor, were you 03:24:30PM
 cranking into the equation Adams higher 03:24:32PM
 margin? 03:24:36PM
 MR. GLUCKOW: Vague and 03:24:36PM
 ambiguous. Overbroad. 03:24:37PM
 You can answer. 03:24:38PM
 THE WITNESS: I 03:24:39PM
 consider that, offsetting 03:24:39PM
 that there was a volume of 03:24:40PM
 Callaway, its size and the 03:24:42PM
 credibility factor. 03:24:44PM
 So, if you take 03:24:45PM
 everything involved in 03:24:46PM
 Callaway and everything 03:24:47PM

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BY MR. COLLINS: 03:25:13PM
 Q. Now, there is no -- you 03:25:14PM
 are familiar with the documents in 03:25:16PM
 Exhibit-332; correct? 03:25:18PM
 A. Sure. 03:25:19PM
 Q. You are familiar with that 03:25:19PM
 literature? 03:25:22PM
 A. But I don't have a perfect 03:25:22PM
 memory, and there is a lot of information. 03:25:24PM
 So, I tried to get -- review the articles 03:25:26PM
 in general, but for a specific question 03:25:30PM
 like that, it takes some time. 03:25:33PM
 Q. So, the only one -- as you 03:25:35PM
 are sitting here now, the only article 03:25:37PM
 that, as you are sitting here now, might 03:25:38PM
 support your prediction, at least, the 03:25:41PM
 only one that comes to mind is this 03:25:48PM
 article that Ochoa cited, which was -- who 03:25:50PM
 was the author again? 03:25:53PM
 A. It's in the Journal of 03:25:55PM
 Marketing Channels, I believe, 2003. If I 03:25:57PM
 -- I -- if memory serves me, I think the 03:25:59PM
 authors were Myers, Griffith. 03:26:02PM
 Q. Okay. 03:26:03PM

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Page 302

BY MR. COLLINS: 03:29:18PM
 Q. Just for the record, what 03:29:19PM
 3 are you looking at -- this is from the 03:29:20PM
 4 Ochoa documents? 03:29:21PM
 5 A. Yes. 03:29:22PM
 6 Q. What are you looking at? 03:29:22PM
 7 A. Ochoa 0032 to Ochoa 0034. 03:29:24PM
 8 It is an article by Myers, Griffith. 03:29:29PM
 9 Q. Please. 03:29:31PM
 10 A. Organizational and 03:29:32PM
 11 Product-Related Influences of Gray Market 03:29:37PM
 12 Channel Activity. 03:29:40PM
 13 So, they measure firm size 03:29:42PM
 14 as number of employees and sales volume, 03:29:45PM
 15 and their measure of gray marketing 03:29:47PM
 16 activity was unauthorized imports of our 03:29:49PM
 17 product are a major problem for our firm. 03:29:53PM
 18 We have complete control over who 03:29:57PM
 19 distributes our product in this market, 03:29:59PM
 20 and they refer to -- and they found that 03:30:01PM
 21 the greater number of employees and the 03:30:06PM
 22 greater the sales volume, the more likely 03:30:07PM
 23 it was that they did not have complete 03:30:10PM
 24 control over who distributes the product 03:30:11PM

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1 in the market, and that unauthorized 03:30:14PM
 2 imports of our products are a major 03:30:16PM
 3 problem for our firm 03:30:18PM
 4 So, that -- I believe that 03:30:20PM
 5 does support, to some extent, my -- my 03:30:22PM
 6 prediction. 03:30:24PM
 7 Q. Now, this study does not, 03:30:24PM
 8 however, factor in higher margins; does 03:30:29PM
 9 it? 03:30:38PM
 10 A. It does not 03:30:38PM
 11 Q. So, therefore, this study 03:30:39PM
 12 doesn't really support your assertions or 03:30:41PM
 13 your prediction? 03:30:44PM
 14 A. Completely 03:30:46PM
 15 Q. Okay. 03:30:49PM
 16 A. Partial support. 03:30:49PM
 17 Q. Partial support, to the 03:30:50PM
 18 extent that it suggests that, everything 03:30:52PM
 19 else being the same, including margins 03:30:55PM
 20 being the same, the larger the size of the 03:30:58PM
 21 company, the greater the amount of gray 03:31:01PM
 22 marketing activity 03:31:04PM
 23 Have I got that right? 03:31:05PM
 24 MR. GLUCKOW: I'm just 03:31:06PM

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1 going to object 03:31:07PM
 2 Overbroad, vague and 03:31:07PM
 3 ambiguous. 03:31:08PM
 4 You can answer 03:31:09PM
 5 THE WITNESS: Correct. 03:31:10PM
 6 --- 03:31:10PM
 7 BY MR. COLLINS: 03:31:10PM
 8 Q. And does this article go 03:31:13PM
 9 to a greater percentage or a greater 03:31:14PM
 10 dollar volume of gray marketing? 03:31:16PM
 11 A. Well, you see that's -- 03:31:19PM
 12 that's the issue. I don't -- it doesn't 03:31:20PM
 13 directly measure either. 03:31:22PM
 14 It -- it -- the gray 03:31:24PM
 15 marketing activity is measured on; one, 03:31:26PM
 16 strongly agrees. Strongly disagree. 03:31:29PM
 17 So, let me add -- 03:31:31PM
 18 So, in your firm, do 03:31:33PM
 19 unauthorized imports of our product, is 03:31:36PM
 20 that a major problem for your firm? 03:31:39PM
 21 You would either say; one, 03:31:41PM
 22 strongly agree; seven, strongly disagree 03:31:42PM
 23 or somewhere in between. 03:31:44PM
 24 So you can say that; well, 03:31:46PM

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1 if imports are a major problem, it could 03:31:47PM
 2 impact -- adversely impact sales on the 03:31:50PM
 3 higher percentage of gray marketing 03:31:54PM
 4 activity, but they did not directly 03:31:56PM
 5 measure it. 03:31:58PM
 6 Q. Sure. 03:31:58PM
 7 A. But; secondly, do you have 03:31:58PM
 8 complete control over who distributes your 03:32:01PM
 9 product? And if you strongly disagreed 03:32:03PM
 10 with that -- again, it is not a direct 03:32:05PM
 11 measure -- 03:32:07PM
 12 Q. Sure. 03:32:08PM
 13 A. -- but it's -- so it's -- so 03:32:08PM
 14 you have to look at the measure, too. 03:32:11PM
 15 Q. Absolutely. 03:32:12PM
 16 A. Yeah. 03:32:13PM
 17 Q. And, interestingly, this 03:32:13PM
 18 study is conducted by Askin Corporate 03:32:15PM
 19 Management; right? 03:32:18PM
 20 A. Oh, that is true. 03:32:19PM
 21 Q. So, here, this author, on 03:32:20PM
 22 whom you relied, or you were contemplating 03:32:24PM
 23 relying -- 03:32:26PM
 24 A. Huh-huh. 03:32:28PM

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1 Q. — seems to have a greater 03:32:28PM
 2 faith in the views of corporate management 03:32:30PM
 3 that are contemporaneous than you do? 03:32:32PM
 4 MR. GLUCKOW: Objection 03:32:35PM
 5 to the characterization, and 03:32:35PM
 6 also, objection to the 03:32:36PM
 7 reference to relying, 03:32:37PM
 8 I think Professor 03:32:39PM
 9 Frazier's been quite clear. 03:32:41PM
 10 MR. COLLINS: I — I — 03:32:41PM
 11 MR. GLUCKOW: I want to 03:32:42PM
 12 make one thing very clear, 03:32:43PM
 13 for the record, that what 03:32:45PM
 14 he has been talking about 03:32:46PM
 15 responding to your questions 03:32:47PM
 16 about Callaway, but he was 03:32:48PM
 17 very careful to say; this is 03:32:49PM
 18 something he said today in 03:32:51PM
 19 response to your question, 03:32:52PM
 20 as opposed to something he 03:32:53PM
 21 was relying on for purposes 03:32:55PM
 22 of giving his opinion. 03:32:56PM
 23 I want to make sure 03:32:57PM
 24 that we are clear on that. 03:32:57PM

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1 at all, but they are facts 03:33:36PM
 2 related to Adams, facts 03:33:37PM
 3 related to gray market 03:33:39PM
 4 sales, facts related to 03:33:40PM
 5 complaints, facts related to 03:33:41PM
 6 challenges confronting Adams 03:33:45PM
 7 from a marketing point of 03:33:45PM
 8 view. 03:33:45PM
 9 So, it's not an 03:33:46PM
 10 inconsistency. I am using 03:33:47PM
 11 this to partially support 03:33:49PM
 12 my answer to one of your 03:33:54PM
 13 questions that you raised 03:33:55PM
 14 today, and I would not 03:33:56PM
 15 say that any one single, 03:33:58PM
 16 empirical study, 03:34:00PM
 17 especially when published 03:34:01PM
 18 in a non-prestigious journal 03:34:03PM
 19 like Journal of Marketing 03:34:06PM
 20 Channels, not one of our 03:34:06PM
 21 major journals. 03:34:06PM
 22 So, I wouldn't put a 03:34:08PM
 23 lot of stock in this study 03:34:09PM
 24 anyway. 03:34:10PM

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1 THE WITNESS: Could I 03:32:59PM
 2 answer? 03:32:59PM
 3 MR. COLLINS: Please. 03:33:00PM
 4 THE WITNESS: They are 03:33:00PM
 5 two different purposes when 03:33:03PM
 6 you do a piece of research 03:33:04PM
 7 that — where you want to 03:33:05PM
 8 increase general knowledge 03:33:08PM
 9 in your discipline, and in 03:33:09PM
 10 order to test hypothesis, 03:33:11PM
 11 you need data and often 03:33:14PM
 12 times in survey data, what 03:33:15PM
 13 you are doing is, you are 03:33:17PM
 14 taking a large sample of a 03:33:18PM
 15 certain population of firms. 03:33:19PM
 16 You send out surveys to its 03:33:21PM
 17 managers. You analyze the 03:33:22PM
 18 data. 03:33:23PM
 19 That's a completely 03:33:24PM
 20 different purpose than in my 03:33:26PM
 21 role, as an expert in this 03:33:29PM
 22 case, where I have the 03:33:30PM
 23 luxury of a lot of facts 03:33:32PM
 24 that are not survey related 03:33:34PM

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1 But it's partial 03:34:10PM
 2 support of the findings are 03:34:12PM
 3 indicative, at least to some 03:34:13PM
 4 extent, of support for my 03:34:15PM
 5 answer. 03:34:19PM
 6 --- 03:34:19PM
 7 BY MR. COLLINS: 03:34:19PM
 8 Q. Do you also agree that this 03:34:20PM
 9 non-prestigious article which provides 03:34:22PM
 10 partial support, you claim, to your 03:34:26PM
 11 prediction, lends support to the approach 03:34:28PM
 12 that, if you want to know the effect of 03:34:34PM
 13 gray marketing at any particular time at 03:34:37PM
 14 any particular firm, one place you might 03:34:42PM
 15 go for answers is the company's 03:34:45PM
 16 management? 03:34:47PM
 17 MR. GLUCKOW: Objection. 03:34:48PM
 18 Overbroad. 03:34:49PM
 19 You can answer. 03:34:49PM
 20 THE WITNESS: You — 03:34:50PM
 21 you wouldn't do something 03:34:51PM
 22 like this across firms if 03:34:54PM
 23 you wanted to give advice to 03:34:55PM
 24 a particular firm. 03:34:57PM

78 (Pages 306 to 309)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, CA. NO.
INCORPORATED 99-371-KAJ

SECURITIES LITIGATION

Wednesday, August 9, 2006

Oral deposition of GARY L. FRAZIER,
was taken pursuant to Notice, at the
offices of SIMPSON THACHER & BARTLETT LLP,
425 Lexington Avenue, New York, NY
10017-3954 on the above date before
DEBRA G. JOHNSON-SPALLONE, CSR, RPR,
Notary Public, and a Federally Approved
Reporter of the United States District
Court commencing at or about 10:40 a.m.

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1	where the magnitude of gray	12:37:26PM	1	contexts and certain situations of that	12:39:27PM
2	market sales is high that	12:37:32PM	2	type, clearly gray -- once all of those	12:39:30PM
3	have tremendous intra-brand	12:37:36PM	3	conditions exist, whether short or long	12:39:35PM
4	competition for their brand	12:37:38PM	4	run, that's adverse to the company	12:39:37PM
5	can face a precarious	12:37:43PM	5	Q. Okay. That's helpful.	12:39:40PM
6	situation, because in	12:37:45PM	6	You talk in your last answer	12:39:46PM
7	instances where there are	12:37:49PM	7	about intra-brand competition.	12:39:49PM
8	a lot of gray market sales	12:37:50PM	8	What does that mean?	12:39:52PM
9	and rami -- intra-brand	12:37:52PM	9	A. So, for example, 54,000 Ford	12:39:52PM
10	competition among and	12:37:57PM	10	dealers, and many Ford dealers are within	12:39:55PM
11	between both authorized	12:37:59PM	11	a few miles of each other, so that the	12:39:58PM
12	channel members and	12:38:01PM	12	same customers -- can get -- can sort of	12:40:01PM
13	unauthorized channel	12:38:02PM	13	pick one dealer against another and	12:40:05PM
14	members, your relationships	12:38:03PM	14	negotiate on price, such as, many Ford	12:40:10PM
15	with your authorized channel	12:38:04PM	15	dealers will be selling product below what	12:40:14PM
16	members can deteriorate.	12:38:06PM	16	they really want the product to be sold	12:40:17PM
17	The authorized channel	12:38:08PM	17	at, and so intra-brand competition --	12:40:19PM
18	members will complain.	12:38:09PM	18	competition for a particular brand.	12:40:22PM
19	Conflict can turn from	12:38:14PM	19	Q. I see.	12:40:25PM
20	functional to dysfunctional.	12:38:16PM	20	And --	12:40:26PM
21	Investments in the brand	12:38:20PM	21	A. And the intra-brand	12:40:27PM
22	may be reduced or absent	12:38:22PM	22	competition is based upon sales in both	12:40:28PM
23	altogether.	12:38:25PM	23	authorized and unauthorized channels.	12:40:31PM
24	---	12:38:25PM	24	Q. I see.	12:40:33PM

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1	BY MR. COLLINS:	12:38:25PM	1	A. It could be sales over the	12:40:34PM
2	Q. I didn't mean to stop you,	12:38:27PM	2	Internet in particular cases as well	12:40:35PM
3	but that last point, investments, whose	12:38:28PM	3	Q. Okay.	12:40:38PM
4	investments?	12:38:31PM	4	So, if you have a situation	12:40:39PM
5	A. By the authorized channel	12:38:31PM	5	with a golf club or anything elsewhere,	12:40:41PM
6	member	12:38:33PM	6	Costco is selling in the same geographical	12:40:44PM
7	Q. Please continue.	12:38:34PM	7	location as an authorized dealer, that	12:40:52PM
8	A. So, for example, it is very	12:38:34PM	8	constitutes intra-brand competition?	12:40:58PM
9	important for a shopping good like golf	12:38:38PM	9	MR. GLUCKOW: Objection	12:41:00PM
10	clubs to have sales personnel in the	12:38:45PM	10	Overbroad.	12:41:01PM
11	on-course and off-course establishments	12:38:49PM	11	You can answer	12:41:02PM
12	trained in your clubs and the benefits of	12:38:51PM	12	MR. COLLINS: I'm not	12:41:02PM
13	your club, and why they should introduce	12:38:53PM	13	asking you whether it	12:41:04PM
14	it to their customers	12:38:55PM	14	matters very much.	12:41:04PM
15	And if -- if the magnitude	12:38:57PM	15	I'm just asking you	12:41:05PM
16	of gray market sales is extreme and	12:38:58PM	16	whether it is -- that is	12:41:06PM
17	intra-brand competition is too high,	12:39:03PM	17	intra-brand competition.	12:41:07PM
18	the upper management of the retail	12:39:05PM	18	THE WITNESS: It is not	12:41:09PM
19	establishment will simply not expend the	12:39:08PM	19	always a given because you	12:41:10PM
20	resources necessary to have these sales	12:39:12PM	20	have to look at the segments	12:41:13PM
21	people trained adequately That can be	12:39:14PM	21	of people shopping at a	12:41:17PM
22	very adverse. Prices can erode. Service	12:39:16PM	22	Costco, and the segments of	12:41:19PM
23	can erode. Margins can erode.	12:39:21PM	23	customers, end customers,	12:41:19PM
24	So, in -- in -- in certain	12:39:25PM	24	shopping at an authorized	12:41:21PM

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1	store	12:41:23PM	1	in the mid-west and southeast selling	12:42:45PM
2	A sale in a	12:41:25PM	2	women's fashions.	12:42:47PM
3	non-authorized channel may	12:41:26PM	3	And they used me when I was	12:42:48PM
4	not mean that the store in	12:41:27PM	4	at IU to decide whether or not they should	12:42:50PM
5	the same area is losing a	12:41:29PM	5	open up a discount store where they had	12:42:53PM
6	sale.	12:41:31PM	6	unsold merchandise in the their regular	12:42:55PM
7	MR. COLLINS: Sure	12:41:31PM	7	stores, and instead of keeping it in the	12:42:57PM
8	THE WITNESS: It might	12:41:32PM	8	regular store, you would go to Paul Harris	12:43:00PM
9	be someone who would never	12:41:32PM	9	discount stores and sell it at a much	12:43:02PM
10	buy at a specialty store,	12:41:36PM	10	lower price and their certain was	12:43:04PM
11	but suddenly sees a club	12:41:38PM	11	cannibalization.	12:43:04PM
12	in-house.	12:41:39PM	12	And so my research, we did	12:43:07PM
13	Hey, there weren't	12:41:41PM	13	consumer studies that indicated that the	12:43:08PM
14	clubs here last week, but	12:41:42PM	14	people who shop in the regular stores	12:43:10PM
15	there is clubs here this	12:41:44PM	15	would not generally be the people shopping	12:43:13PM
16	week.	12:41:45PM	16	in discount stores.	12:43:15PM
17	So, simply because you	12:41:45PM	17	There is little market or	12:43:16PM
18	have brought us in Costco	12:41:49PM	18	segment overlap, therefore, go ahead and	12:43:18PM
19	and product in another store	12:41:50PM	19	open up the stores and -- and --	12:43:20PM
20	in the same area, that	12:41:51PM	20	Q. I see.	12:43:22PM
21	doesn't necessarily mean	12:41:52PM	21	A. -- they did, and they did	12:43:23PM
22	there will be any	12:41:54PM	22	pretty well with that.	12:43:24PM
23	intra-brand competition.	12:41:55PM	23	So -- so, if there are more	12:43:25PM
24	---	12:41:55PM	24	segments in an industry, you get more	12:43:27PM
Page 143			Page 145		
1	BY MR. COLLINS:	12:41:55PM	1	distribution.	12:43:29PM
2	Q. There might be -- there	12:41:57PM	2	But, if certain segments go	12:43:30PM
3	might not be intra-brand competition if,	12:41:59PM	3	one way and certain segments go another,	12:43:32PM
4	in one geographical area, you have Costco	12:42:01PM	4	there can be very little intra-brand	12:43:35PM
5	selling and you have an authorized	12:42:04PM	5	competition.	12:43:37PM
6	retailer selling; correct?	12:42:07PM	6	Q. I see. All right	12:43:39PM
7	A. May or may not be	12:42:08PM	7	So, let's say we are talking	12:43:39PM
8	Q. Okay. Fair enough	12:42:10PM	8	about a situation that already exists --	12:43:40PM
9	And there's more likely to	12:42:18PM	9	A. Huh-huh.	12:43:41PM
10	be such intra-brand competition where the	12:42:23PM	10	Q. -- where Costco was selling	12:43:42PM
11	market is segmented with high, medium,	12:42:27PM	11	and the authorized retailer is selling,	12:43:44PM
12	low; correct?	12:42:30PM	12	how do you measure?	12:43:47PM
13	MR. GLUCKOW: Objection	12:42:31PM	13	Whom do you talk to?	12:43:49PM
14	Mischaracterizes his	12:42:32PM	14	What tests do you run to	12:43:50PM
15	testimony	12:42:32PM	15	determine whether Costco is reducing the	12:43:52PM
16	---	12:42:32PM	16	sales that the authorized retailer would	12:43:58PM
17	BY MR. COLLINS:	12:42:32PM	17	otherwise enjoy?	12:44:00PM
18	Q. High, medium, low consumers	12:42:34PM	18	MR. GLUCKOW: Objection.	12:44:01PM
19	Am I understanding	12:42:36PM	19	Overbroad	12:44:02PM
20	correctly?	12:42:36PM	20	You can answer.	12:44:03PM
21	A. Let me give you an example	12:42:37PM	21	---	12:44:03PM
22	I did a consulting study for	12:42:38PM	22	BY MR. COLLINS:	12:44:03PM
23	Paul Harris once. I'm not sure if they	12:42:40PM	23	Q. Can I just make --	12:44:06PM
24	even exist. But, they had retail stores	12:42:43PM	24	A. Sure.	12:44:07PM

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1	trying to support a new	02:22:24PM	1	You can answer.	02:23:29PM
2	distributor in Canada, and	02:22:26PM	2	THE WITNESS: I can't	02:23:29PM
3	I believe they did try to	02:22:30PM	3	say all	02:23:31PM
4	keep the relationship	02:22:32PM	4	---	02:23:31PM
5	strong.	02:22:33PM	5	BY MR. COLLINS:	02:23:31PM
6	I don't see complaints	02:22:33PM	6	Q. So, it could be that there	02:23:31PM
7	as indicant of detriment.	02:22:35PM	7	were a number who were dissatisfied and	02:23:32PM
8	MR. COLLINS: Sure.	02:22:35PM	8	stopped dealing with Adams Golf that did	02:23:34PM
9	---	02:22:35PM	9	not complain.	02:23:38PM
10	BY MR. COLLINS:	02:22:35PM	10	That is at least possible;	02:23:38PM
11	Q. Actually, I -- believe it or	02:22:38PM	11	isn't it?	02:23:39PM
12	not, I can understand that	02:22:40PM	12	MR. GLUCKOW: Same	02:23:40PM
13	We had this discussion with	02:22:43PM	13	objection	02:23:40PM
14	Dr. Grace the other day that, a lot of	02:22:45PM	14	It calls for	02:23:41PM
15	times customers will walk -- will go with	02:22:46PM	15	speculation.	02:23:42PM
16	their feet, right?	02:22:50PM	16	You can answer.	02:23:42PM
17	A lot of times customers who	02:22:50PM	17	THE WITNESS: I have	02:23:43PM
18	are unhappy aren't going to call Barney	02:22:52PM	18	seen no definitive evidence	02:23:44PM
19	Adams and say, I'm certainly concerned	02:22:54PM	19	in this case that any dealer	02:23:45PM
20	about gray marketing. I'd love to stop	02:22:57PM	20	terminated its relationship	02:23:48PM
21	by	02:22:57PM	21	with Adams because of gray	02:23:49PM
22	Isn't that accurate?	02:22:57PM	22	market sales	02:23:53PM
23	MR. GLUCKOW: Objection.	02:22:59PM	23	Now, I would like to	02:23:53PM
24	Overbroad, vague and	02:23:00PM	24	see that evidence. If you	02:23:55PM
Page 227			Page 229		
1	ambiguous.	02:23:01PM	1	have some of the evidence, I	02:23:56PM
2	You can answer	02:23:02PM	2	would like to see it.	02:23:57PM
3	THE WITNESS: Are you	02:23:03PM	3	But, in everything I	02:23:58PM
4	talking about the end	02:23:03PM	4	have read, I found no	02:23:59PM
5	consumer, or are you talking	02:23:04PM	5	definitive piece of	02:24:00PM
6	about authorized channel	02:23:06PM	6	information that, on their	02:24:02PM
7	members?	02:23:07PM	7	own volition, a retailer	02:24:04PM
8	MR. COLLINS:	02:23:07PM	8	stopped selling Adams	02:24:05PM
9	Authorized channel members.	02:23:07PM	9	because of gray market	02:24:07PM
10	THE WITNESS:	02:23:07PM	10	sales	02:24:07PM
11	Authorized channel members	02:23:09PM	11	MR. COLLINS: Well,	02:24:09PM
12	are different in their	02:23:09PM	12	let's explore that a little,	02:24:09PM
13	behavior than end consumers	02:23:10PM	13	at least, hypothetically	02:24:14PM
14	on consumer complaining.	02:23:13PM	14	THE WITNESS: All	02:24:15PM
15	---	02:23:13PM	15	right	02:24:15PM
16	BY MR. COLLINS:	02:23:13PM	16	---	02:24:15PM
17	Q. So, you think that	02:23:15PM	17	BY MR. COLLINS:	02:24:15PM
18	authorized channel participants -- members	02:23:17PM	18	Q. If a retailer stopped	02:24:15PM
19	who are dissatisfied with gray marketing	02:23:18PM	19	selling Adams because of gray market	02:24:19PM
20	complained?	02:23:25PM	20	sales, that might occur, at least	02:24:23PM
21	MR. GLUCKOW: Objection.	02:23:26PM	21	hypothetically, because the retailer is	02:24:26PM
22	Overbroad	02:23:26PM	22	enjoying lower margins now than was the	02:24:28PM
23	Mischaracterizes his	02:23:27PM	23	case before the gray market sales?	02:24:32PM
24	testimony.	02:23:29PM	24	MR. GLUCKOW: Objection.	02:24:34PM

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1	---	1	existed at the time of the
2	BY MR. COLLINS:	2	IPO
3	Q Is that -- is that a logical	3	MR. GLUCKOW: Same
4	assumption so far?	4	objection.
5	MR. GLUCKOW: Objection	5	You can answer
6	Overbroad and	6	THE WITNESS: Risks
7	incomplete hypothetical	7	to me means there is a
8	You can answer	8	condition faced by the
9	THE WITNESS: Let me	9	company that can adversely
10	make sure I understand	10	effect sales and earnings in
11	---	11	the future.
12	BY MR. COLLINS:	12	It is a real serious
13	Q So, I am to presume	13	issue, a significant issue.
14	that there is a retailer out there,	14	Competition is one.
15	potentially, that stopped selling Adams	15	Competition leading to lower
16	products because its margins were	16	prices is one.
17	adversely effected by gray market sales?	17	There are a number of
18	MR. COLLINS: Right	18	risk factors -- risks that
19	THE WITNESS: It would	19	Adams was facing at the time
20	be possible -- potentially	20	of the IPO.
21	possible	21	I think we have talked
22	---	22	about some of them from a
23	BY MR. COLLINS:	23	marketing point of view.
24	Q Whether there was any such	24	Given the information I
Page 231		Page 233	
1	retailer who stopped buying Adams product	1	have, the facts I have, I
2	because of lower margins caused by gray	2	don't believe gray market
3	marketing, wasn't it possible, as of the	3	sales was a risk to Adams at
4	time of the IPO, that might occur in the	4	the time of the IPO.
5	future?	5	---
6	That is; wasn't Adams facing	6	BY MR. COLLINS:
7	a risk or a danger that, in the future,	7	Q Well, isn't it possible
8	from gray marketing it would lose	8	that, at the time of the IPO, there were
9	customers because of lower margins from	9	authorized retailers who knew of the gray
10	gray market sales?	10	marketing, were concerned about it, but
11	MR. GLUCKOW: Objection	11	did not complain to Adams because Adams
12	Incomplete	12	had issued the June press release?
13	hypothetical Vague,	13	You are familiar with the
14	ambiguous.	14	June press release?
15	You can answer	15	A You mean the litigation with
16	THE WITNESS: So, it is	16	Costco?
17	a hypothetical you are	17	Q Right.
18	asking me?	18	MR. GLUCKOW: Objection.
19	MR. COLLINS: Right.	19	Incomplete hypothetical.
20	It is actually not, no	20	Calls for speculation
21	THE WITNESS: No.	21	You can answer
22	MR COLLINS: I am	22	THE WITNESS: So, you
23	asking whether the	23	are asking me to presume
24	possibility of the risk	24	that they saw that and

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GONSALVES

09:38:48 AM

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1 09:38:48 AM
2 PROCEEDINGS:
3 09:38:48 AM
4 MARK GONSALVES, called as a witness 09:51:22 AM
5 by Plaintiff, having been first duly sworn by 09:46:56 AM
6 Arne' B. Davis, a stenographic reporter within 09:46:56 AM
7 and for the State of Georgia, was examined and 09:46:56 AM
8 testified as follows: 09:46:56 AM
9 EXAMINATION 09:51:22 AM
10 BY MR. COLLINS: 09:51:22 AM
11 Q. Thank you for coming today. I'm Todd 09:51:22 AM
12 Collins, one of the Plaintiff's lawyers in the 09:51:25 AM
13 case. Do you have a lawyer representing you 09:51:27 AM
14 today? 09:51:30 AM
15 A. Yes (indicating) 09:51:31 AM
16 Q. That's Mr. Bessette? 09:51:32 AM
17 A. Yes. 09:51:34 AM
18 Q. Who is paying for Mr. Bessette's 09:51:39 AM
19 services? 09:51:41 AM
20 A. Adams Golf 09:51:46 AM
21 Q. Now, you used to work for Adams Golf? 09:51:52 AM
22 A. Yes 09:51:57 AM
23 Q. Have you ever been deposed before? 09:51:58 AM
24 A. Many, many years ago. 09:52:00 AM
25 Q. If you don't understand any of my 09:52:02 AM

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1 questions, if you would let me know, I would 09:52:03 AM
2 appreciate it 09:52:06 AM
3 A. Okay 09:52:08 AM
4 Q. If you need a break, that's great; 09:52:09 AM
5 we'll take a break, just not while the question 09:52:11 AM
6 is pending, if you would. Okay? 09:52:14 AM
7 A. Yes. 09:52:17 AM
8 Q. Let me mark as Exhibit 253, a document 09:52:17 AM
9 that's UND 369-38-70 and, while I'm at it, 254, 09:52:21 AM
10 adams 040748 through 65 09:52:31 AM
11 (Whereupon Plaintiff's Exhibit Number 09:52:59 AM
12 253 and 254 were marked for identification) 09:52:59 AM
13 Q. (By Mr. Collins) Let's look at 253 09:52:59 AM
14 first. This is -- These are the departmental and 09:53:30 AM
15 functional organizational charts as of 1998 at 09:53:36 AM
16 Adams Golf; is that accurate? 09:53:43 AM
17 A. Yes 09:53:56 AM
18 MR. GLUCKOW: Objection to form. 09:53:56 AM
19 MR. COLLINS: Grounds, counsel? 09:54:02 AM
20 MR. GLUCKOW: I don't see any question 09:54:04 AM
21 based on the basis of the document itself, 09:54:04 AM
22 and I think you're saying things about the 09:54:07 AM
23 document that are not clear from the 09:54:10 AM
24 document. 09:54:11 AM
25 MR. COLLINS: That's one of the reasons 09:54:13 AM

Page 8

1 I ask questions. 09:54:14 AM
2 Q. (By Mr. Collins) Now, you are over on 09:54:16 AM
3 the left-hand side on each of these two pages, 09:54:17 AM
4 Vice President of Sales; is that correct? That 09:54:20 AM
5 was your position in 1998 up until the time you 09:54:25 AM
6 left Adams Golf? 09:54:31 AM
7 A. I think my title when I left was VP of 09:54:33 AM
8 Sales and of Retail Marketing. I think there was 09:54:37 AM
9 something in regard to marketing as the title as 09:54:47 AM
10 well but, suffice it to say, it was the sales 09:54:49 AM
11 function. 09:54:52 AM
12 Q. Now, first of all, look at the 09:54:53 AM
13 departmental organizational chart: Under your 09:54:56 AM
14 name there are three boxes, Wholesale, Custom 09:55:02 AM
15 Fitting and International. Are those three 09:55:06 AM
16 different departments of sales as of 1998? 09:55:09 AM
17 A. That's correct. 09:55:14 AM
18 Q. What was the wholesale department? 09:55:15 AM
19 A. The wholesale department sold golf 09:55:17 AM
20 clubs to our accounts. 09:55:21 AM
21 Q. Is that retail accounts? 09:55:24 AM
22 A. Yes, the people that would sell to the 09:55:26 AM
23 end user, pro shop, golf shop. 09:55:29 AM
24 Q. Was it the wholesale division, group, 09:55:33 AM
25 what did you call it? 09:55:36 AM

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1 A. We called it Inside Sales. 09:55:41 AM
2 Q. Inside Sales sold to US retailers, 09:55:43 AM
3 correct, as opposed to foreign distributors? 09:55:47 AM
4 A. That's correct. 09:55:52 AM
5 Q. What was Custom Fitting? 09:55:53 AM
6 A. It was a smaller department that had 09:55:56 AM
7 various golf professionals that custom fit our 09:55:58 AM
8 equipment through their membership, primarily, on 09:56:05 AM
9 course, what we call Green Grass. 09:56:08 AM
10 Q. Would the Custom Fitting group or 09:56:13 AM
11 department sold clubs at a higher price than the 09:56:19 AM
12 wholesale group? 09:56:22 AM
13 A. They sold a different product 09:56:26 AM
14 Q. How was it different? 09:56:28 AM
15 A. They sold iron, sets of irons, which 09:56:30 AM
16 were custom fit, whereas the Inside Sales sold 09:56:33 AM
17 woods, Tight Lies. 09:56:37 AM
18 Q. The International department, to whom 09:56:40 AM
19 did they sell? 09:56:43 AM
20 A. International distributors 09:56:45 AM
21 Q. Now, this says three employees for 09:56:47 AM
22 International. Were there only three employees 09:56:50 AM
23 in International sales in 1998 while you were at 09:56:56 AM
24 Adams Golf? 09:56:59 AM
25 A. I can think of three. 09:57:09 AM

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1	Q. Who can you think of?	09:57:12 AM	1	Q. Do you have any reason -- Did you	10:06:43 AM
2	A. A gentleman by the name of Chris Beebe,	09:57:12 AM	2	prepare the projections contained on Page 40765?	10:06:46 AM
3	Marc Puglielli, and I believe there was an	09:57:26 AM	3	A. I remember providing projections,	10:07:17 AM
4	assistant named Pamela	09:57:43 AM	4	whether this is the actual projection, I could	10:07:19 AM
5	Q. At the time you left Adams Golf, did	09:57:52 AM	5	not tell you.	10:07:22 AM
6	those three people comprise the International	09:57:54 AM	6	Q. Who was John Joyce?	10:07:25 AM
7	department to the best of your recollection?	09:57:57 AM	7	A. To my knowledge, John Joyce worked in	10:07:29 AM
8	A. I know Marc and Chris would have been	09:58:05 AM	8	the finance department.	10:07:34 AM
9	there; I can't remember Pamela.	09:58:08 AM	9	Q. At Adams Golf?	10:07:36 AM
10	Q. If you go to the second page, under	09:58:10 AM	10	A. Correct.	10:07:38 AM
11	Sales, there is a different grouping under your	09:58:12 AM	11	Q. Did John Joyce or someone explain --	10:07:39 AM
12	name. Is it correct that Inside Sales and	09:58:15 AM	12	Did John Joyce or someone else ask you to prepare	10:07:42 AM
13	domestic retail accounts were part of wholesale,	09:58:21 AM	13	these projections?	10:07:46 AM
14	as indicated on the first page of this document?	09:58:27 AM	14	MR BESSETTE: I would object. He said	10:07:50 AM
15	A. That's correct.	09:58:33 AM	15	he did not know if these were the ones he	10:07:51 AM
16	Q. Then, Custom Fitting corresponded to	09:58:35 AM	16	prepared.	10:07:54 AM
17	the Custom Fitting back on Page 1, correct?	09:58:37 AM	17	Q. (By Mr. Collins) I'll rephrase. It is	10:07:55 AM
18	A. That's correct.	09:58:43 AM	18	correct that John Joyce or someone asked you to	10:07:57 AM
19	Q. Where did Green Grass accounts fit in	09:58:43 AM	19	prepare 1999 and 1998 projections and that	10:08:00 AM
20	with regard to the three boxes on Page 1?	09:58:46 AM	20	request was made sometime in early or the first	10:08:05 AM
21	A. Inside Sales function	09:58:49 AM	21	half of 1999?	10:08:09 AM
22	Q. International distribution on Page 2 is	09:58:53 AM	22	A. That would be correct.	10:08:12 AM
23	the same as International under Page 1, right?	09:58:55 AM	23	Q. Was it Joyce who asked you to do this?	10:08:13 AM
24	A. That's correct.	09:58:59 AM	24	A. That I'm not sure	10:08:17 AM
25	Q. Now, as far as you know, these two	09:59:00 AM	25	Q. Was it Barney Adams who ask you to do	10:08:20 AM
Page 11			Page 13		
1	pages of Exhibit 253, did they represent the	09:59:02 AM	1	it?	10:08:23 AM
2	organizational chart of Adams Golf as of the time	09:59:06 AM	2	A. Possibly.	10:08:23 AM
3	of the IPO?	09:59:11 AM	3	Q. Do you have an understanding as to why	10:08:27 AM
4	MR. GLUCKOW: Objection to form.	09:59:16 AM	4	it was that you were asked to prepare these	10:08:34 AM
5	Q. (By Mr. Collins) You may answer	09:59:20 AM	5	projections -- to prepare projections?	10:08:36 AM
6	A. To the best of my memory.	09:59:22 AM	6	A. I would have been asked to prepare	10:08:42 AM
7	Q. Let me ask you about 254. You might	09:59:25 AM	7	projections because I had the responsibility for	10:08:44 AM
8	want to read to yourself that first paragraph on	09:59:32 AM	8	sales.	10:08:48 AM
9	the first page.	09:59:35 AM	9	Q. Before 1998, had you prepared	10:08:49 AM
10	A. Okay	10:00:16 AM	10	multi-year projections?	10:08:52 AM
11	Q. Have you seen Exhibit 254 before? Feel	10:00:16 AM	11	MR BESSETTE: At Adams Golf?	10:08:58 AM
12	three to flip through the pages if that will	10:00:19 AM	12	MR. COLLINS: Thank you, yes.	10:09:02 AM
13	help	10:00:24 AM	13	A. I prepared projections prior to 1998,	10:09:05 AM
14	A. (Complying)	10:00:25 AM	14	whether they were multi year or not, that I don't	10:09:09 AM
15	Q. Thank you for taking the time to look	10:04:29 AM	15	know.	10:09:13 AM
16	over the document.	10:06:07 AM	16	Q. Did you have an understanding as to the	10:09:14 AM
17	Have you seen the document?	10:06:09 AM	17	purpose of preparing 1998 and 1999 projections in	10:09:16 AM
18	A. I believe I have; it's such long time	10:06:15 AM	18	or about the first half of 1998?	10:09:22 AM
19	ago I could not tell you specifically. I don't	10:06:18 AM	19	MR BESSETTE: I'm sorry. Asked and	10:09:28 AM
20	see my signature anywhere on the document. I see	10:06:21 AM	20	answered. I'm going to object as vague.	10:09:29 AM
21	at the end that it says provided by but --	10:06:24 AM	21	You can answer the question.	10:09:35 AM
22	Q. You're referring to Page 40765, where	10:06:29 AM	22	A. Restate it, now.	10:09:38 AM
23	it says provided by Mark Gonsalves to John Joyce,	10:06:32 AM	23	Q. Not a problem: Why did you prepare	10:09:41 AM
24	April 1998; is that correct?	10:06:38 AM	24	projections for 1998 and 1999?	10:09:50 AM
25	A. Correct.	10:06:42 AM	25	A. To provide our finance department and	10:09:59 AM

4 (Pages 10 to 13)

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1	you can remember going back that far, starting in 10:24:05 AM	1	Q Let's talk about King Par. What was 10:29:29 AM
2	1997. Did that ongoing crisis have any impact on 10:24:08 AM	2	it? 10:30:09 AM
3	your thinking about Asia as a growth percentage? 10:24:13 AM	3	A. A retail operation in the upper 10:30:10 AM
4	A. That's a good point but, because we 10:24:18 AM	4	midwest, I think, Michigan. 10:30:15 AM
5	were not entrenched yet, starting pretty much 10:24:21 AM	5	Q Was King Par an authorized retailer of 10:30:16 AM
6	from zero in spite of the fact that the economies 10:24:26 AM	6	Adams Golf? 10:30:20 AM
7	of Asia were struggling at that point in time. 10:24:29 AM	7	A. Initially, they were an authorized 10:30:25 AM
8	because we were so new into that market, there 10:24:33 AM	8	retailer 10:30:28 AM
9	was still a significant demand for our product 10:24:38 AM	9	Q Did it come a time when they ceased 10:30:30 AM
10	there by golfing enthusiasts in that part of the 10:24:42 AM	10	being an authorized user? 10:30:34 AM
11	world 10:24:51 AM	11	A. I can't remember the specifics 10:30:36 AM
12	Q Let me ask you to look at another 10:24:52 AM	12	MR BESSETTE: That's a yes or no 10:30:38 AM
13	document 10:24:54 AM	13	A. I don't know. 10:30:40 AM
14	(Whereupon a discussion ensued off the 10:25:47 AM	14	Q Although you can't remember the 10:30:42 AM
15	record) 10:24:57 AM	15	specifics, you do remember what about King Par? 10:30:43 AM
16	(Whereupon Plaintiff's Exhibit Number 10:25:47 AM	16	A. I remember what's illustrated in this 10:30:48 AM
17	255 was marked for identification.) 10:25:47 AM	17	memo, that we had an order that came back to us 10:30:51 AM
18	Q (By Mr. Collins) Take your time looking 10:25:47 AM	18	from them. 10:30:56 AM
19	over this document. My first question would be 10:25:56 AM	19	Q What was the reason why the order came 10:31:02 AM
20	whether you were the author of it 10:25:59 AM	20	back? 10:31:04 AM
21	A. Yes, it looks like me. 10:27:45 AM	21	MR BESSETTE: Objection, vague. You 10:31:13 AM
22	Q And you authored this document on or 10:27:47 AM	22	mean, as expressed in the memo? 10:31:14 AM
23	about March 27th, 1998, in the course of your 10:27:48 AM	23	Q (By Mr. Collins) In your last answer, 10:31:18 AM
24	normal business? 10:27:53 AM	24	you said there was an order that came back. I'm 10:31:18 AM
25	A. Sounds correct. I can't remember 10:27:56 AM	25	asking you why, to your understanding, did it 10:31:20 AM
Page 23		Page 25	
1	anything from March of 1998, but with the dates 10:28:00 AM	1	come back? 10:31:22 AM
2	on there. I'm confident that's accurate 10:28:04 AM	2	A. They refused the order 10:31:23 AM
3	Q Mr. Murtland, what was his position at 10:28:09 AM	3	Q Their refusal, as you understood it, 10:31:31 AM
4	the time? 10:28:13 AM	4	was related to Adams Golf calling King Par to 10:31:33 AM
5	A. He was Vice President of Operations 10:28:14 AM	5	task for trans-shipping to a retailer in 10:31:39 AM
6	Q Why did you write this memo to him? 10:28:16 AM	6	Massachusetts named MVP Sports? 10:31:42 AM
7	A. Because Dick had approached me 10:28:21 AM	7	A. MVP Sports 10:31:44 AM
8	regarding these orders because he handled the 10:28:24 AM	8	Q How did Adams Golf learn that King Par 10:31:49 AM
9	production side of Adams Golf. When he's gone 10:28:29 AM	9	had trans-shipped to MVP Sports? 10:31:55 AM
10	through the effort of producing a large order and 10:28:34 AM	10	A. I don't know how we discovered that. 10:32:08 AM
11	that order either comes back or does not get 10:28:37 AM	11	Q Did you personally discover that or did 10:32:16 AM
12	shipped, it would be a normal concern for him. 10:28:40 AM	12	somebody inform you of that? 10:32:19 AM
13	So I'm addressing his concerns by providing him 10:28:46 AM	13	A. I don't know. That was a long time 10:32:37 AM
14	the rationale on what went on in those specific 10:28:50 AM	14	ago 10:32:40 AM
15	orders. 10:28:55 AM	15	Q It is that 10:32:41 AM
16	Q If you remember with regard to Dunham, 10:28:56 AM	16	Just to probe a little: The person who 10:32:42 AM
17	was this order eventually -- If I'm understanding 10:28:59 AM	17	informed you, Mr. Gonsalves, of that 10:32:44 AM
18	the gist of this memo, have I got it correct that 10:29:05 AM	18	trans-shipment, was that somebody at Adams Golf? 10:32:47 AM
19	the order was not shipped originally anyway 10:29:08 AM	19	MR BESSETTE: Objection, assumes facts 10:32:53 AM
20	because of Dunham's insistence on a consignment 10:29:12 AM	20	not in evidence 10:32:54 AM
21	arrangement. Is that right so far? 10:29:18 AM	21	A. I can't remember how we discovered King 10:32:59 AM
22	A. That's correct 10:29:22 AM	22	Par was trans-shipping golf clubs to MVP Sports. 10:33:04 AM
23	Q Was the order ever shipped, if you 10:29:23 AM	23	How I learned about it -- I can't recall how I 10:33:08 AM
24	know 10:29:24 AM	24	learned about it 10:33:12 AM
25	A. That I don't remember. 10:29:26 AM	25	Q MVP Sports at the time was not an 10:33:15 AM

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1 authorized retailer of Adams; is that correct? 10:33:18 AM
 2 A. That is correct 10:33:21 AM
 3 Q. How many clubs did MVP Sports receive 10:33:26 AM
 4 by way of this trans-shipment, please? 10:33:31 AM
 5 A. I don't remember 10:33:39 AM
 6 Q. In view of the fact that, according to 10:33:47 AM
 7 this memo, MVP Sports was advertising it must 10:33:49 AM
 8 have been more than a handful of clubs, I gather; 10:33:55 AM
 9 is that your understanding? 10:34:00 AM
 10 MR. BESSETTE: Calls for speculation. 10:34:02 AM
 11 A. I can't go there only because retailers 10:34:04 AM
 12 are fairly notorious for advertising a product 10:34:06 AM
 13 they have very limited quantity to provide 10:34:11 AM
 14 traffic to their store. I'm not sure of the 10:34:14 AM
 15 intent of that advertisement 10:34:17 AM
 16 Q. That's fine 10:34:20 AM
 17 In this paragraph you say: We called 10:34:30 AM
 18 them to task, that is, King Par, for the 10:34:33 AM
 19 trans-shipment. 10:34:37 AM
 20 What does that mean? 10:34:38 AM
 21 A. Having that been my words, I would say 10:34:46 AM
 22 what I was doing at that time was addressing our 10:34:50 AM
 23 non trans-shipment policy to King Par. 10:34:59 AM
 24 Q. When you say, addressing to King Par, 10:35:09 AM
 25 do you mean you simply informed King Par of that 10:35:11 AM

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1 policy? 10:35:14 AM
 2 A. That would be correct. I informed 10:35:15 AM
 3 them. I'm not sure at this point who at King Par 10:35:20 AM
 4 I would have spoken with, but that would have 10:35:24 AM
 5 been correct. It would have been their buyer, I 10:35:30 AM
 6 would say. 10:35:37 AM
 7 Q. Do you know who that was? 10:35:39 AM
 8 A. I think he was a large fat man. I'm 10:35:42 AM
 9 not good with the names but really good with 10:35:56 AM
 10 physical traits of people 10:35:58 AM
 11 Q. How did the large fat man react? 10:36:01 AM
 12 A. Nothing I can recall was any behavior I 10:36:06 AM
 13 thought was unusual. 10:36:12 AM
 14 Q. This large fat man, I gather he was the 10:36:15 AM
 15 buyer on behalf of King Par, correct? 10:36:20 AM
 16 A. That would be correct. 10:36:23 AM
 17 Q. That was an employee of King Par? 10:36:24 AM
 18 A. I believe so 10:36:29 AM
 19 Q. Did the buyer, when you called him to 10:36:29 AM
 20 task, express surprise at the existence of any 10:36:33 AM
 21 such no trans-shipment policy? 10:36:39 AM
 22 A. I can't remember the specifics of the 10:36:42 AM
 23 conversation. 10:36:43 AM
 24 Q. Now, you referred a moment ago to the 10:36:46 AM
 25 no trans-shipment policy. When was that policy 10:36:53 AM

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1 created? 10:36:57 AM
 2 A. As a company, we have or had -- I don't 10:36:58 AM
 3 know what they do now, but there was a document 10:37:05 AM
 4 that we would provide to customers in regard to 10:37:08 AM
 5 our policies, pricing and the fact that they're 10:37:13 AM
 6 selling to the end user, the golfer, but they're 10:37:20 AM
 7 not to be re-sold in a trans-shipment type 10:37:24 AM
 8 manner. When that document became a formal 10:37:27 AM
 9 document, that I don't recall, but it would have 10:37:32 AM
 10 been -- I don't recall. 10:37:38 AM
 11 There was a document. When it came 10:37:46 AM
 12 into being, I'm not sure. It would have been as 10:37:48 AM
 13 we were starting to develop our brand. Prior to 10:37:51 AM
 14 that, there was no need for a document because we 10:37:54 AM
 15 had no customers. At some point, it came into 10:37:57 AM
 16 being so that we were able to be clear with our 10:38:01 AM
 17 customer base. 10:38:05 AM
 18 Q. Was this document in being as March 10:38:10 AM
 19 27th, 1998? 10:38:15 AM
 20 A. That is a good question. 10:38:18 AM
 21 Q. Was it in being as of July 9th, 1998? 10:38:20 AM
 22 A. I don't remember when the document came 10:38:25 AM
 23 into being. 10:38:26 AM
 24 Q. Was the document relayed or transmitted 10:38:31 AM
 25 to authorized retailers once it came into being? 10:38:35 AM

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1 A. That would have been correct. 10:38:42 AM
 2 Q. How would that transmission have gone? 10:38:43 AM
 3 A. To my recollection, we did a mailing to 10:38:48 AM
 4 our customers, and I believe and you may want to 10:38:50 AM
 5 check with the credit department on this, but I 10:38:57 AM
 6 believe our invoices at one point in time created 10:38:59 AM
 7 that document 10:39:04 AM
 8 Q. By that document, you're referring to a 10:39:05 AM
 9 statement that trans-shipment of sales to anyone 10:39:07 AM
 10 other than an end user is prohibited? 10:39:13 AM
 11 A. That would have been one of the points 10:39:17 AM
 12 in that document, words to that effect 10:39:18 AM
 13 Q. Now, as of March 27th, 1998, was there 10:39:21 AM
 14 any policy as to what would be what Adams Golf 10:39:26 AM
 15 would do if an authorized retailer trans-shipped? 10:39:32 AM
 16 A. Because I don't remember when that 10:39:54 AM
 17 document came into being, that's a difficult 10:39:55 AM
 18 question to answer. I don't know the timeline of 10:39:57 AM
 19 that. 10:40:02 AM
 20 Q. Once the document you referred to came 10:40:09 AM
 21 into being what, if anything, was the sanction, 10:40:10 AM
 22 if an authorized dealer trans-shipped? 10:40:13 AM
 23 A. We would have addressed what we 10:40:18 AM
 24 perceived to be the trans-shipment and restate 10:40:21 AM
 25 our policy. To my knowledge, we would have -- I 10:40:27 AM

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1 Mr. Beebe? 12:27:36 AM
 2 A. Okay (complying) 12:27:39 AM
 3 Q. Did you receive these two documents 85 12:31:02 AM
 4 and 86 on or about May 29th, 1998? 12:31:04 AM
 5 A. I believe so. 12:31:09 AM
 6 Q. Did he prepare these memos, sending 12:31:10 AM
 7 them to you in the normal course of his duties? 12:31:13 AM
 8 A. Yes. 12:31:16 AM
 9 Q. Did you ever tell Beebe or anyone else 12:31:17 AM
 10 that you thought Beebe in these two memos was 12:31:21 AM
 11 exaggerating the situation in Canada with respect 12:31:26 AM
 12 to Costco? 12:31:30 AM
 13 A. I think there were two sides of the 12:31:48 AM
 14 issue: One is, we had obviously a genuine 12:31:50 AM
 15 concern for our distributor and our accounts. On 12:31:55 AM
 16 the other hand, we always realized that a good 12:31:59 AM
 17 salesperson will take a potential issue that a 12:32:04 AM
 18 customer faces and tend to make it of great 12:32:08 AM
 19 importance at the time. I know that I would have 12:32:14 AM
 20 done that in my sales career. So that's where 12:32:19 AM
 21 we're trying to weigh it out. 12:32:23 AM
 22 Q. Did you ever tell Mr. Beebe or anybody 12:32:26 AM
 23 else that you thought that in these two memos, 85 12:32:27 AM
 24 and 86, that Beebe was exaggerating regarding its 12:32:31 AM
 25 situation in Canada? 12:32:37 AM

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1 A. I would not have used that term; I 12:32:44 AM
 2 don't recall. 12:32:47 AM
 3 Q. Did you ever tell anybody that you 12:32:48 AM
 4 thought Beebe got it wrong or was stating 12:32:49 AM
 5 inaccurately what the situation was in Canada? 12:32:53 AM
 6 A. I think that it's not so much feeling 12:33:05 AM
 7 like he got it wrong as maybe understanding the 12:33:14 AM
 8 scale. 12:33:21 AM
 9 Q. Well, that's fine. 12:33:24 AM
 10 With all due respect, I'm going to ask 12:33:25 AM
 11 the question one more time because, if you 12:33:27 AM
 12 expressed this to someone, I want you to tell me 12:33:29 AM
 13 about it, but I'm really not asking you your 12:33:32 AM
 14 impression right now to the completeness of -- 12:33:35 AM
 15 Respectfully, all I'm asking is, when you 12:33:39 AM
 16 received 85 and 86, I presume, on or about May 12:33:42 AM
 17 29, 1998, did you say to anybody, Beebe is 12:33:47 AM
 18 smoking something; it's not that bad? 12:33:50 AM
 19 A. I don't remember. 12:33:53 AM
 20 Q. You have no recollection of having done 12:33:54 AM
 21 so, correct? 12:33:55 AM
 22 A. I don't remember. 12:33:58 AM
 23 Q. That's fine. 12:34:00 AM
 24 Soon after May 29, 1998, you and Barney 12:34:02 AM
 25 Adams authorized the price-matching program, 12:34:05 AM

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1 true? 12:34:08 AM
 2 A. Again, it's very hard for me to provide 12:34:10 AM
 3 specifics on the timeline. My best judgment 12:34:19 AM
 4 would say that's true. 12:34:26 AM
 5 Q. Now, there was a press release issued 12:34:30 AM
 6 on June 9th, 1998. I show you -- 12:34:34 AM
 7 (Whereupon a discussion ensued off the 12:34:56 AM
 8 record) 12:34:52 AM
 9 Q. (By Mr. Collins) Exhibit 20: You've 12:35:04 AM
 10 seen this before, I gather? 12:35:10 AM
 11 A. Yeah, I'm familiar with this. 12:35:44 AM
 12 Q. Were you consulted before the release 12:35:47 AM
 13 was issued? 12:35:50 AM
 14 A. Not to my knowledge. 12:35:54 AM
 15 Q. Who decided to issue this release? 12:35:56 AM
 16 A. Would have been Barney Adams. 12:36:01 AM
 17 Q. Who decided to institute the 12:36:02 AM
 18 litigation? 12:36:04 AM
 19 A. Barney Adams. 12:36:07 AM
 20 Q. Did Adams ask your opinion on either 12:36:09 AM
 21 the release or the litigation before they were 12:36:12 AM
 22 instituted? 12:36:18 AM
 23 A. During that period of time, we 12:36:25 AM
 24 certainly discussed Costco and the potential 12:36:26 AM
 25 remedies that would be available to us. Barney 12:36:30 AM

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1 is the one that took those conversations and 12:36:44 AM
 2 manifested it into this document, into the legal 12:36:48 AM
 3 action. 12:36:51 AM
 4 Q. In your last answer, when you referred 12:36:53 AM
 5 to "we", were you referring to just you and 12:36:55 AM
 6 Barney Adams or did the discussions include 12:36:59 AM
 7 others as well? 12:37:02 AM
 8 A. I don't recall who else might have been 12:37:06 AM
 9 party to those conversations. So I don't want to 12:37:08 AM
 10 exclude anyone by saying it was only me and 12:37:17 AM
 11 Barney, but I would think that he would have had 12:37:20 AM
 12 most of that conversation with me and potentially 12:37:28 AM
 13 Chris. 12:37:31 AM
 14 Q. Did you ever offer your opinion on the 12:37:35 AM
 15 advisability of filing suit? 12:37:37 AM
 16 A. Did you talk to Barney yet? 12:37:46 AM
 17 Q. Soon. 12:37:52 AM
 18 A. Say the question again. I'm sorry 12:38:00 AM
 19 Q. Whose idea was it to file the Bill of 12:38:06 AM
 20 Discovery? 12:38:10 AM
 21 A. Barney Adams. 12:38:11 AM
 22 Q. Did you ever say to him, that's a lame 12:38:12 AM
 23 brain idea, don't bother with it? 12:38:14 AM
 24 A. No. 12:38:18 AM
 25 Q. What was the thinking behind it, the 12:38:19 AM

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1	rationale, as you understood it? 12:38:22 AM	1	even apart from that, you were still concerned 12:43:24 AM
2	MR. BESSETTE: Objection, calls for 12:38:26 AM	2	about the market? 12:43:28 AM
3	speculation 12:38:27 AM	3	A. Every golf manufacturer that has a 12:43:30 AM
4	Q (By Mr. Collins) What did you think or 12:38:29 AM	4	popular product is going to have concerns about 12:43:33 AM
5	what did Barney tell you he thought was the good 12:38:30 AM	5	trans-shipment of their product and also 12:43:36 AM
6	that it served by filing a lawsuit? 12:38:34 AM	6	duplication of their product that comes in the 12:43:39 AM
7	A. Again, you're asking me to speculate 12:38:39 AM	7	form of direct copying or what we refer to in the 12:43:43 AM
8	what Barney's motives were, but my understanding 12:38:40 AM	8	business as clones, clubs that appear very 12:43:48 AM
9	would be that he wanted to serve notice to our 12:38:47 AM	9	similar to the hot-selling product of the day. 12:43:52 AM
10	partners, as he referred to them in this release, 12:38:56 AM	10	Q. Very good. 12:43:55 AM
11	that we do not sell to Costco 12:39:01 AM	11	Now, just focusing on the 12:43:58 AM
12	It's one thing for you to tell the 12:39:07 AM	12	trans-shipment, grey marketing matter: You refer 12:44:00 AM
13	customer that; it's another thing for them to see 12:39:09 AM	13	to every golf manufacturer having concerns. 12:44:03 AM
14	a legal document that says that you don't. I 12:39:14 AM	14	Those concerns are going to be heightened when 12:44:06 AM
15	believe he may have felt that that would 12:39:18 AM	15	you have occasions that grey marketing, 12:44:10 AM
16	clarify -- Because you have to remember, we were 12:39:23 AM	16	trans-shipment, is actually occurring, correct? 12:44:12 AM
17	in an environment where there was a lot of 12:39:27 AM	17	MR. BESSETTE: Objection, calls for 12:44:17 AM
18	competition so, of course, a competitor is going 12:39:30 AM	18	speculation. 12:44:19 AM
19	to use any advantage that they have, namely, a 12:39:34 AM	19	MR. GLUCKOW: Also mischaracterizes his 12:44:20 AM
20	competitor named Orlimar, who would have been 12:39:37 AM	20	testimony 12:44:23 AM
21	more than happy to describe to any retailer, oh, 12:39:42 AM	21	Q. (By Mr. Collins) You may answer 12:44:25 AM
22	yeah, those guys sell to Costco 12:39:45 AM	22	A. If I understand the question correctly, 12:44:25 AM
23	I think that might have been -- Your 12:39:48 AM	23	in the normal course of business, it would be one 12:44:28 AM
24	answer lies with Barney, not with me, but I 12:39:51 AM	24	of our many concerns that we would have as a 12:44:35 AM
25	believe that might have been part of his 12:39:54 AM	25	business, sure. 12:44:38 AM
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1	motivation and, of course, the other part was to 12:39:57 AM	1	Q In your last answer, when you say, one 12:44:41 AM
2	be able to the serve notice to Costco that we 12:40:01 AM	2	of our main concerns, were you referring to 12:44:43 AM
3	were serious about the issue of trans-shipment. 12:40:04 AM	3	actual instances of trans-shipment and grey 12:44:46 AM
4	Q Wasn't grey market -- Is that right -- 12:41:40 AM	4	marketing occurring? Is that what you were 12:44:53 AM
5	Start again: 12:41:45 AM	5	referring to? 12:45:00 AM
6	Whatever the degree of seriousness of 12:42:00 AM	6	A One of those many concerns, yes 12:45:02 AM
7	the trans-shipment, the grey marketing problem, 12:42:02 AM	7	MR. COLLINS: Why don't we break 12:45:07 AM
8	one reason it was serious to whatever extent it 12:42:09 AM	8	(Whereupon a lunchbreak ensued at 12:45 to 12:45:09 AM
9	was, was because of the possibility that 12:42:16 AM	9	1:41 PM) 12:45:13 AM
10	retailers might have thought that Adams Golf was 12:42:19 AM	10	Q (By Mr. Collins) What were the other 01:41:46 PM
11	selling to Costco; is that right? 12:42:27 AM	11	concerns, besides in the normal course of 01:41:47 PM
12	MR. BESSETTE: Objection, ambiguous. 12:42:30 AM	12	business as of June-July? 01:41:50 PM
13	Q (By Mr. Collins) One reason 12:42:45 AM	13	A. Economic concerns, competitor concerns, 01:41:53 PM
14	trans-shipment, grey marketing, was a concern was 12:42:46 AM	14	supplier concerns, weather concerns, personnel 01:42:05 PM
15	because of the possibility that some retailer 12:42:49 AM	15	concerns, advertising concerns. 01:42:13 PM
16	might have thought Adams Golf was selling 12:42:52 AM	16	Q By economic, you do mean financial? 01:42:17 PM
17	directly to Costco; is that right? 12:42:56 AM	17	A Really more economic in the sense of 01:42:20 PM
18	MR. GLUCKOW: Objection, vague and 12:43:00 AM	18	the economy 01:42:22 PM
19	ambiguous. 12:43:01 AM	19	Q Was there a concern about whether it 01:42:26 PM
20	A I would say that's a definite 12:43:05 AM	20	would be continue to be a hot product? 01:42:30 PM
21	possibility. 12:43:10 AM	21	A I don't think anyone shared that 01:42:35 PM
22	Q But even apart from that, it was still 12:43:12 AM	22	concern at that time. 01:42:35 PM
23	a concern, that is, even apart from the risk or 12:43:14 AM	23	Q Was there a concern about whether Adams 01:42:38 PM
24	the danger that some retailer might have gotten 12:43:19 AM	24	Golf would be able to develop additional products 01:42:41 PM
25	the idea that Adams Golf was selling to Costco, 12:43:21 AM	25	beyond the Tight Lies? 01:42:46 PM

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1	A. I think every golfer, stated or	01:42:50 PM	1	young fellow who was basically in my position, in	01:46:00 PM
2	unstated, has a concern about the consumer	01:42:53 PM	2	the sense of sales there, named Nathaniel Crosby,	01:46:05 PM
3	acceptance. That would be true of any	01:42:56 PM	3	son of Bing Crosby. Nathaniel Crosby had a lot	01:46:10 PM
4	manufacturer, not specific to golf	01:42:58 PM	4	of traction in the marketplace because he was a	01:46:15 PM
5	Q. Now, the IPO occurred and soon	01:43:04 PM	5	very good player, he won the US Amateur and, of	01:46:19 PM
6	thereafter Adams Golf released its June 1998	01:43:10 PM	6	course, his lineage. So we were having to reduce	01:46:24 PM
7	numbers, which exceeded expectations, if you	01:43:17 PM	7	our profile at the very time they turned their	01:46:29 PM
8	recall that. Do you have a recollection of that?	01:43:21 PM	8	profile straight up. It would be like Pepsi	01:46:32 PM
9	A. I don't have a recollection of the	01:43:25 PM	9	stopping advertising. What would happen to	01:46:36 PM
10	numbers, but my memory is that we did okay.	01:43:26 PM	10	Coca-Cola? They would take market share. That	01:46:38 PM
11	Q. Soon after the IPO, the price of the	01:43:31 PM	11	was a big concern at that point in time in	01:46:44 PM
12	stock declined. Do you remember that?	01:43:36 PM	12	retrospect and, then, the economy as related to	01:46:44 PM
13	A. Yes.	01:43:40 PM	13	golf in general was starting to really soften.	01:46:47 PM
14	Q. There was a marked decline, even during	01:43:42 PM	14	So that really -- Calloway was kind of	01:46:56 PM
15	July, which was the month when the IPO occurred?	01:43:45 PM	15	the bellwether, I would say. So I think as goes	01:46:59 PM
16	A. Yes.	01:43:49 PM	16	Calloway, the perception was, as goes the	01:47:03 PM
17	Q. Do you recall any of the reasons for	01:43:50 PM	17	industry. I think we really suffered the	01:47:06 PM
18	that decline?	01:43:52 PM	18	coattailing effect of that, if my memory is	01:47:09 PM
19	MR. BESSETTE: Assumes facts not in	01:43:58 PM	19	right. I could be way off base, but if my memory	01:47:13 PM
20	evidence	01:44:00 PM	20	is right, we announced our second quarter	01:47:18 PM
21	MR. COLLINS: You're right about that.	01:44:01 PM	21	earnings which were positive. They announced	01:47:21 PM
22	Let me rephrase	01:44:02 PM	22	their second quarter earnings, which were below	01:47:25 PM
23	Q. (By Mr. Collins) With regard to the	01:44:04 PM	23	expectation. So I think we really suffered from	01:47:30 PM
24	decline in the stock price, did you ever give any	01:44:05 PM	24	that.	01:47:33 PM
25	thought as to why the decline occurred in July	01:44:09 PM	25	Q. Was Adams, in your opinion, partly	01:47:36 PM
Page 95			Page 97		
1	and in August?	01:44:12 PM	1	responsible for Calloway's under performance?	01:47:39 PM
2	A. Yes	01:44:14 PM	2	A. I don't believe so.	01:47:42 PM
3	Q. Did you discuss your thoughts with	01:44:17 PM	3	Q. Not compete in the same club	01:47:55 PM
4	anyone?	01:44:18 PM	4	categories?	01:47:57 PM
5	A. I would think there was probably some	01:44:29 PM	5	A. I think Calloway's under performance	01:48:01 PM
6	conversation regarding the stock.	01:44:33 PM	6	had more to do with what we would call their line	01:48:04 PM
7	Q. With whom?	01:44:37 PM	7	extension. They moved into a lot of different	01:48:09 PM
8	A. It's a conversation that Barney and I	01:44:48 PM	8	areas with their brand, publishing clothing, golf	01:48:11 PM
9	might have had a discussion or two about it. We	01:44:50 PM	9	balls and a variety of things. They were	01:48:17 PM
10	were focused on our business and trying to --	01:44:54 PM	10	investing significant time and capital in that	01:48:21 PM
11	trying to improve our business, but it wasn't	01:44:59 PM	11	and taking away from their core competency	01:48:25 PM
12	something we focused on but, obviously, knew that	01:45:04 PM	12	Q. Did you ever talk to any of the	01:48:33 PM
13	it was there	01:45:07 PM	13	underwriters? The IPO had several underwriters,	01:48:34 PM
14	Q. In July and August, did you come to any	01:45:08 PM	14	correct?	01:48:40 PM
15	conclusions as to why you thought the stock price	01:45:11 PM	15	A. Yes.	01:48:41 PM
16	was declining?	01:45:14 PM	16	Q. Did you ever talk to any of the	01:48:41 PM
17	A. The conclusions that I would have had	01:45:21 PM	17	underwriters about the reason for the stock price	01:48:42 PM
18	at that point would have been from a couple of	01:45:24 PM	18	decline at Adams post IPO?	01:48:45 PM
19	different vantage points. One, would have been	01:45:27 PM	19	A. I don't know if I did. I don't know if	01:48:53 PM
20	the original quiet period that we had to go	01:45:31 PM	20	anyone specifically called me and made such a	01:48:55 PM
21	through. I don't know all of the SEC	01:45:37 PM	21	request.	01:49:01 PM
22	requirements; I'm not an expert by any means, but	01:45:40 PM	22	(Whereupon Plaintiff's Exhibit Number	01:49:18 PM
23	I know there was a period of time that we had to	01:45:45 PM	23	259 was marked for identification.)	01:49:18 PM
24	reduce our public exposure of the company	01:45:48 PM	24	MR. COLLINS: Adams 14012	01:49:19 PM
25	At the exact time, Orlimar they had a	01:45:57 PM	25	Q. (By Mr. Collins) When you can, tell me	01:49:41 PM

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<p>1 speculation 02:29:35 PM</p> <p>2 MR. BESSETTE: With the Calloway club? 02:29:37 PM</p> <p>3 MR. COLLINS: Yes 02:29:42 PM</p> <p>4 A. I don't know how to answer to that. I 02:29:43 PM</p> <p>5 don't know what Calloway's policies were in 02:29:44 PM</p> <p>6 relation to their own distribution. 02:29:47 PM</p> <p>7 Q. Now, you know there was some 02:29:49 PM</p> <p>8 information in this Exhibit 167 with regard to 02:29:50 PM</p> <p>9 Calloway retailer margins? 02:29:55 PM</p> <p>10 A. That's correct. 02:29:58 PM</p> <p>11 Q. Where was that information obtained? 02:29:59 PM</p> <p>12 A. Is there a notation on the slot 02:30:02 PM</p> <p>13 Q. It's Page 29 of Exhibit 167. 02:30:05 PM</p> <p>14 A. I don't know where that number came 02:30:21 PM</p> <p>15 from 02:30:23 PM</p> <p>16 Q. In regard to Calloway on this page, 29, 02:30:25 PM</p> <p>17 is that the blended margin for discounters and 02:30:28 PM</p> <p>18 also for golf shops or is that instead the golf 02:30:32 PM</p> <p>19 shop margin? 02:30:39 PM</p> <p>20 A. Because there's no reference on this 02:30:41 PM</p> <p>21 slide and it was eight years ago, I could not 02:30:43 PM</p> <p>22 tell you where those numbers came from. 02:30:46 PM</p> <p>23 Q. As you can see in from this page, 02:30:53 PM</p> <p>24 Calloway's margin is less than half of the Adams' 02:30:56 PM</p> <p>25 margin. Is that as a result, as you described, a 02:31:01 PM</p>	<p>1 the price. It becomes a spiral that starts to 02:33:05 PM</p> <p>2 work downward as far as margins 02:33:08 PM</p> <p>3 Q. Now, in your last two answers, what's 02:33:13 PM</p> <p>4 the basis of your information there? 02:33:15 PM</p> <p>5 A. Having been in golf as a player for 02:33:19 PM</p> <p>6 30-some-odd years and having worked in the 02:33:21 PM</p> <p>7 industry for a period of time 02:33:27 PM</p> <p>8 Q. Thank you. 02:33:32 PM</p> <p>9 Did you personally encourage any 02:33:50 PM</p> <p>10 distributors or retailers to purchase shares in 02:33:52 PM</p> <p>11 the IPO? 02:34:03 PM</p> <p>12 A. I did not encourage them to purchase 02:34:07 PM</p> <p>13 shares in the IPO, although there were retailers 02:34:10 PM</p> <p>14 who wanted to avail, I think it's called friends 02:34:13 PM</p> <p>15 and family list that a company will have that 02:34:21 PM</p> <p>16 they could purchase shares at the going-out 02:34:28 PM</p> <p>17 price. So there were retailers that were on that 02:34:34 PM</p> <p>18 list. So we made them aware they could 02:34:41 PM</p> <p>19 participate, if they so chose to do that. 02:34:43 PM</p> <p>20 Q. Did you or anyone at Adams encourage or 02:34:48 PM</p> <p>21 urge those retailers to show support for Adams 02:34:51 PM</p> <p>22 Golf by purchasing in the IPO? 02:34:56 PM</p> <p>23 A. I think that we maintained a mutual 02:35:01 PM</p> <p>24 position there. Were we enthusiastic about our 02:35:04 PM</p> <p>25 IPO? I would say, like any company going through 02:35:12 PM</p>
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<p>1 motion that the Calloway clubs by 1998 were 02:31:05 PM</p> <p>2 becoming a more widely distributed product? By 02:31:10 PM</p> <p>3 widely distributed, I mean distributed through 02:31:17 PM</p> <p>4 discounters as well as golf shops. 02:31:21 PM</p> <p>5 MR. GLUCKOW: Objection, calls for 02:31:26 PM</p> <p>6 speculation. 02:31:27 PM</p> <p>7 MR. BESSETTE: I agree. 02:31:31 PM</p> <p>8 A. I can't say that specifically. My 02:31:32 PM</p> <p>9 thought is that -- purely my thought -- is that 02:31:34 PM</p> <p>10 Calloway had enjoyed a very significant period of 02:31:42 PM</p> <p>11 success prior to 1998. The retail community are 02:31:49 PM</p> <p>12 a very competitive bunch of folks, whether it's 02:31:58 PM</p> <p>13 golf or anything else. So over time, I think the 02:32:05 PM</p> <p>14 retail community is competing with themselves and 02:32:11 PM</p> <p>15 created their own margin story, if this makes 02:32:14 PM</p> <p>16 sense to you. That's what I believe happened. 02:32:21 PM</p> <p>17 Q. What did you mean when you say 02:32:28 PM</p> <p>18 competing with themselves, created their own 02:32:31 PM</p> <p>19 margin story? 02:32:34 PM</p> <p>20 A. Well, you have golf shops in a similar 02:32:37 PM</p> <p>21 geographical area, and one golf shop wants to 02:32:42 PM</p> <p>22 gain advantage over his competitor. He may 02:32:47 PM</p> <p>23 promote the club at a price point that is lower 02:32:52 PM</p> <p>24 than its competitor to drive his own traffic 02:32:57 PM</p> <p>25 The response from the competitor is, I will map 02:33:02 PM</p>	<p>1 an IPO, there were some general enthusiasm, but I 02:35:16 PM</p> <p>2 think it was not in our best interest to 02:35:26 PM</p> <p>3 encourage people to take actions that they did 02:35:32 PM</p> <p>4 not willfully want to do. We simply availed 02:35:36 PM</p> <p>5 opportunity to them. 02:35:38 PM</p> <p>6 Q. How about the distributors? Did you 02:35:41 PM</p> <p>7 urge or encourage any distributors to purchase in 02:35:44 PM</p> <p>8 the IPO personally or Adams Golf? 02:35:48 PM</p> <p>9 A. We had WDC MacKenzie was part of that 02:35:53 PM</p> <p>10 friends and family list. I can't recall who else 02:35:58 PM</p> <p>11 from the international distribution side of our 02:36:01 PM</p> <p>12 business may have been on that list. I suspect 02:36:06 PM</p> <p>13 there may have been others. 02:36:09 PM</p> <p>14 Q. Did you fly to Canada to discuss this 02:36:11 PM</p> <p>15 with WDC MacKenzie? 02:36:16 PM</p> <p>16 A. I did fly to Canada to meet with WDC 02:36:19 PM</p> <p>17 MacKenzie and, certainly, one of the topics at 02:36:21 PM</p> <p>18 the meeting that you're pointing out would have 02:36:24 PM</p> <p>19 been their inclusion on the friends and family 02:36:29 PM</p> <p>20 list if they so chose to want to participate. 02:36:32 PM</p> <p>21 Q. Did you tell the people at WDC 02:36:36 PM</p> <p>22 MacKenzie how many shares you thought was 02:36:38 PM</p> <p>23 appropriate or reasonable for them to purchase? 02:36:41 PM</p> <p>24 A. No. I told them what they would have 02:36:44 PM</p> <p>25 the opportunity to purchase. 02:36:46 PM</p>

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1	Q Did you encourage them to take 02:36:48 PM	1	think one is the commission plans were changed a 02:50:49 PM
2	advantage of that opportunity and make a 02:36:50 PM	2	number of times as the company continued to gain 02:50:58 PM
3	purchase? 02:36:52 PM	3	more and more momentum. So I think that 02:51:02 PM
4	A. Again. I think. it's kind of like 02:36:54 PM	4	potentially had something to do with it. 02:51:05 PM
5	picking your wife. It's got to be an individual 02:36:57 PM	5	I think Number 2, is that prospectus 02:51:08 PM
6	decision. 02:37:01 PM	6	pretty clearly illustrates who is going to gain 02:51:12 PM
7	All I was simply providing was the 02:37:02 PM	7	what. A the time, people could take out a 02:51:20 PM
8	opportunity for them to participate if they so 02:37:04 PM	8	calculator and figure out what people's newfound 02:51:23 PM
9	chose 02:37:08 PM	9	paper wealth was, and I think there may have been 02:51:26 PM
10	(Whereupon a break ensued at 2:39 PM 02:42:07 PM	10	some feelings because of that and I think, 02:51:29 PM
11	to 2:45 PM) 02:42:01 PM	11	thirdly, I think there was some friction between 02:51:35 PM
12	Q. (By Mr. Collins) I have given Mr. 02:42:07 PM	12	departments and sales. 02:51:39 PM
13	Gonsalves the Exhibit 57, and I presume you've 02:45:32 PM	13	Q. The second point, were you referring to 02:51:50 PM
14	seen it before but I'll ask you to take a moment 02:45:35 PM	14	the decline in the stock price post IPO, to pull 02:51:52 PM
15	to look over it. Let me know when I can ask a 02:45:39 PM	15	out a calculator and determine -- I didn't 02:51:58 PM
16	question 02:45:43 PM	16	understand? 02:52:01 PM
17	A. Okay. 02:48:41 PM	17	A. When the IPO came out, it showed the 02:52:01 PM
18	Q Have you seen these two pages before? 02:48:42 PM	18	holdings of the individuals, the officers and so 02:52:05 PM
19	A. Yes. 02:48:44 PM	19	on. So a person could determine their newfound 02:52:10 PM
20	Q. Was this memo sent to you on or about 02:48:45 PM	20	worth of those individuals. 02:52:13 PM
21	August 14, 1998? 02:48:48 PM	21	Q. I understand. 02:52:16 PM
22	A. Yes 02:48:51 PM	22	So -- 02:52:18 PM
23	Q. May I ask your reaction to this when 02:48:57 PM	23	A. Everything I just told you is 02:52:19 PM
24	you received it? 02:48:59 PM	24	speculation on my part, but it's what I believe. 02:52:21 PM
25	A. My reaction was taken in context with 02:49:00 PM	25	Q. The third point you raised was a 02:52:24 PM
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1	the person who sent it to me. 02:49:04 PM	1	conflict between departments and sales? 02:52:27 PM
2	Q. Which means what? 02:49:09 PM	2	A. Yes 02:52:29 PM
3	A. Which means, Barney is at times able to 02:49:11 PM	3	Q. What did you mean? 02:52:30 PM
4	allow his emotions to distort his thinking on 02:49:23 PM	4	A. I think in most companies there is a 02:52:31 PM
5	certain topics. So I took that in context as 02:49:31 PM	5	natural conflict between Sales and Credit as an 02:52:33 PM
6	related to the content of the memo. 02:49:38 PM	6	example, Sales and Order Entry. Sales is viewed 02:52:38 PM
7	Q Did you make any writing in response to 02:49:41 PM	7	as a more lucrative profession by those that are 02:52:45 PM
8	this? 02:49:43 PM	8	not necessarily in it. 02:52:50 PM
9	A. Not that I know of. I'm sure I spent 02:49:45 PM	9	Q. Point C: They know cheating, at least 02:52:59 PM
10	time with him in regard to this memo. 02:49:48 PM	10	in the form of double shipments occurs and our 02:53:08 PM
11	Q Do you know George Klaus? 02:49:56 PM	11	concern is quietly endorsed. 02:53:13 PM
12	A. I know of him; I don't know him. 02:49:59 PM	12	What is your reaction to that 02:53:18 PM
13	Q Did you talk to George Klaus about this 02:50:01 PM	13	statement? 02:53:19 PM
14	memo or the subject matter? 02:50:03 PM	14	MR. BESSETTE: At the time? 02:53:23 PM
15	A. Not to my knowledge. 02:50:06 PM	15	MR. COLLINS: Yes. 02:53:24 PM
16	Q On Point A on Page 1, that's a 02:50:12 PM	16	A. At the time, I knew of no activity. 02:53:24 PM
17	subjective statement but it says: The department 02:50:18 PM	17	There was no evidence that has ever been 02:53:27 PM
18	staff, presumably refers to Inside Sales staff, 02:50:21 PM	18	presented to me that would make me believe Letter 02:53:29 PM
19	has very low morale. 02:50:28 PM	19	C was correct. 02:53:32 PM
20	Was that accurate statement as of 02:50:31 PM	20	Q. Jay Graeney was an Inside Sales 02:53:36 PM
21	August 1998. 02:50:32 PM	21	associate? 02:53:40 PM
22	A. I believe that for certain individuals 02:50:34 PM	22	A. Yes. 02:53:41 PM
23	that may have been an accurate statement. 02:50:37 PM	23	Q. Were there complaints from customers 02:53:42 PM
24	Q. Why, please. 02:50:41 PM	24	about his activities? 02:53:43 PM
25	A. I think that for a few reasons. I 02:50:42 PM	25	A. I think there were complaints that 02:53:52 PM

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<p>1 customers had about probably every salesperson. 02:53:55 PM 2 Did Jay have complaints? I'm sure he did. When 02:54:01 PM 3 you have that many accounts, I would think 02:54:05 PM 4 there's probably some accounts that you just, for 02:54:07 PM 5 whatever set of reasons. don't connect with as 02:54:12 PM 6 well. 02:54:16 PM 7 Q. Was he one of the top sellers in Inside 02:54:17 PM 8 Sales? 02:54:22 PM 9 A. He was 02:54:23 PM 10 Q. Were you friendly on a social basis 02:54:25 PM 11 with Jay Graeney? 02:54:30 PM 12 A. I was not one to socialize. I played 02:54:36 PM 13 on the company softball team, which he played on 02:54:39 PM 14 as well as other people from Inside Sales. To 02:54:44 PM 15 that extent that would be the end of our social 02:54:47 PM 16 activity. 02:54:50 PM 17 Q. On the second page, there is a 02:55:05 PM 18 reference to -- There is a paragraph that begins: 02:55:06 PM 19 Our short-term goals. The paragraph ends: I 02:55:10 PM 20 realize there are decisions we can make, but just 02:55:17 PM 21 like (ph) diverters, we must rely on these 02:55:24 PM 22 people 02:55:27 PM 23 Do you have opinion as to what is meant 02:55:30 PM 24 by diverters 02:55:32 PM 25 A. I really don't, short term. 02:55:33 PM</p>	<p>1 evidence of that of which I never saw any. The 02:57:25 PM 2 individual that you referenced earlier was the 02:57:28 PM 3 person who had been pinpointed by others as 02:57:30 PM 4 having taken this action. 02:57:36 PM 5 Upon not receiving any hard evidence as 02:57:39 PM 6 relates to any double shipments, I called him 02:57:43 PM 7 into my office and I asked him, as I'm staring at 02:57:48 PM 8 you, whether he did that. He told me he did not. 02:57:52 PM 9 So I supported a member of our team that his 02:57:55 PM 10 word, based on any -- the lack of evidence, to 02:58:00 PM 11 persuade my opinion any other way 02:58:06 PM 12 Although he was the Number 1 02:58:10 PM 13 salesperson at that time, it also should be noted 02:58:11 PM 14 that the Number 2 salesperson we terminated from 02:58:16 PM 15 the company -- I terminated from the company for 02:58:19 PM 16 actions that we felt weren't in keeping with our 02:58:23 PM 17 sales team. In her case, it was disciplinary -- 02:58:28 PM 18 attendance really was the ultimate problem that 02:58:32 PM 19 she faced. 02:58:40 PM 20 Q. Who was that Number 2 person? 02:58:42 PM 21 A. Boy, (pause) I think her first name was 02:58:50 PM 22 Corolla. 02:58:59 PM 23 Q. Now, at the beginning of -- 02:59:03 PM 24 A. That would have been prior to 1998, I 02:59:06 PM 25 believe. 02:59:08 PM</p>
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<p>1 Q. Is that a reference to trans-shippers, 02:55:38 PM 2 if you know? 02:55:41 PM 3 A. I'm not sure what Barney -- I would not 02:55:57 PM 4 know what Barney's intended use of that word is. 02:56:05 PM 5 Q. Did he ever refer to trans-shippers or 02:56:10 PM 6 grey marketers as diverters? 02:56:14 PM 7 A. It's not a term that I'm overly 02:56:18 PM 8 familiar with. He may have. 02:56:20 PM 9 Q. Then, in the next paragraph there is a 02:56:22 PM 10 statement: Apparently, he had made a lot of 02:56:24 PM 11 sales that had been falsely reported (as sales) 02:56:29 PM 12 and a little more than consignments. I gather 02:56:30 PM 13 you don't think that was an accurate statement, 02:56:37 PM 14 as far as you know? 02:56:40 PM 15 A. That's correct. 02:56:41 PM 16 Q. Did Barney tell you the basis of that 02:56:43 PM 17 statement? 02:56:46 PM 18 A. He did not tell me the basis of that 02:56:50 PM 19 statement 02:56:52 PM 20 Q. Did you undertake any investigation to 02:56:53 PM 21 determine whether there was any basis to that 02:56:56 PM 22 statement? 02:56:59 PM 23 A. I had been approached by a couple of 02:57:09 PM 24 people in regard to the potential of this issue 02:57:13 PM 25 of double shipment and so on. I asked for 02:57:18 PM</p>	<p>1 Q. At the beginning of your answer a 02:59:09 PM 2 moment ago, I believe you said that persons came 02:59:10 PM 3 to you with allegations of double shipping. Who 02:59:18 PM 4 would those persons be? 02:59:21 PM 5 A. The individual that I remember coming 02:59:24 PM 6 to me on this was a gentleman name Steve 02:59:30 PM 7 Sanazaro, who was relatively new to the company 02:59:34 PM 8 in the computer department, IT department. Then 02:59:38 PM 9 Sherry Braby, who was our credit manager 02:59:43 PM 10 Q. Did Braby and Sanazaro come to you 03:00:02 PM 11 after or before the August 14th memo from Barney? 03:00:19 PM 12 A. That's a good question. I don't 03:00:29 PM 13 remember the timeline of that. 03:00:30 PM 14 Q. Did Sanazaro tell you what the basis of 03:00:43 PM 15 his concern or question was, why he thought the 03:00:46 PM 16 double shipping might be -- 03:00:51 PM 17 A. I think for me that was the challenge. 03:00:55 PM 18 There was no documents; there was no evidence 03:00:58 PM 19 that I ever saw that indicated this was 03:01:00 PM 20 happening. So in the face of no evidence, it put 03:01:04 PM 21 me in a very difficult position, other than to 03:01:12 PM 22 try to address it directly with the individual 03:01:15 PM 23 involved. 03:01:17 PM 24 Q. I presume Braby also gave you no basis 03:01:19 PM 25 or evidence of double shipping? 03:01:25 PM</p>

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1 A I never saw any evidence, never saw 03:01:27 PM
 2 double purchase orders, never saw hard evidence 03:01:29 PM
 3 Q Further down in the memo in the 03:01:37 PM
 4 paragraph beginning: I don't think, it goes 03:01:38 PM
 5 on to say: Are we living a big lie to present 03:01:42 PM
 6 road show numbers for '98-'99 that we have no 03:01:46 PM
 7 idea we can attain 03:01:50 PM
 8 Was any analysis done with regard to 03:01:58 PM
 9 road show presentations by you or anybody else 03:02:03 PM
 10 after this August 14 memo to your knowledge? 03:02:10 PM
 11 A I don't know the answer to that. I 03:02:46 PM
 12 don't know if we revisited the forecast at that 03:02:48 PM
 13 time or not. 03:02:51 PM
 14 Q As part of the road show, forecasts 03:02:53 PM
 15 were provided in the 3rd and 4th quarters of 1998 03:03:00 PM
 16 and also for '99; is that correct? 03:03:06 PM
 17 A I'm not sure. It's so long ago; I 03:03:09 PM
 18 don't have a recollection that I can commit to 03:03:13 PM
 19 Q Is it correct that financial 03:03:16 PM
 20 projections were provided but you don't know for 03:03:17 PM
 21 what period? 03:03:21 PM
 22 MR BESSETTE: Vague, provided by whom 03:03:24 PM
 23 or to whom? 03:03:29 PM
 24 Q As part of road show presentations? 03:03:30 PM
 25 A I would think Darl had a part of this 03:03:32 PM

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1 presentation that dealt with projections That's 03:03:35 PM
 2 to the best of my knowledge 03:03:38 PM
 3 Q What happened after this memo, if 03:03:40 PM
 4 anything? 03:03:42 PM
 5 MR BESSETTE: Regarding the memo? 03:03:46 PM
 6 Q (By Mr Collins) Regarding -- What was 03:03:51 PM
 7 the next occurrence, if anything? 03:03:54 PM
 8 MR BESSETTE: I'm going to object, 03:03:58 PM
 9 assumes facts not evidence. 03:03:59 PM
 10 A I'm trying to place myself back: I 03:04:05 PM
 11 believe at the time Barney and I reviewed this 03:04:24 PM
 12 memo together, and I gave him my input in regard 03:04:26 PM
 13 to these specific items that he lists here I 03:04:33 PM
 14 think we tried to find common solutions that 03:04:37 PM
 15 would be beneficial to the company as related to 03:04:40 PM
 16 any degree of truth in any of these points 03:04:43 PM
 17 I tried to provide him the best 03:04:54 PM
 18 information I could in regard to maybe where I 03:04:56 PM
 19 thought he was not fully abreast of the topic. 03:04:59 PM
 20 An example would be the reference to 03:05:05 PM
 21 telemarketing and being on the phone for an hour 03:05:10 PM
 22 and a half. 03:05:13 PM
 23 If you're on the phone for an hour and 03:05:14 PM
 24 a half with customers, it may take you four or 03:05:16 PM
 25 five hours of phone time to talk to customers for 03:05:20 PM

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1 an hour and a half because you've got busy 03:05:24 PM
 2 signals, voice mails, people are not there, the 03:05:27 PM
 3 phone doesn't get through, there is a variety of 03:05:30 PM
 4 things that can happen to reduce your talk time 03:05:33 PM
 5 dramatically. I think those types of things were 03:05:34 PM
 6 discussed. 03:05:46 PM
 7 Q Now, you resigned not long after this? 03:05:48 PM
 8 A I'm not sure how long. At that time, 03:05:52 PM
 9 of course, through the IPO, there were -- During 03:05:53 PM
 10 those summer months, let's call them, there were 03:06:01 PM
 11 a lot of recruiters that had been calling. I had 03:06:03 PM
 12 some visibility through trade publications and 03:06:08 PM
 13 golf publications and, certainly, within the golf 03:06:11 PM
 14 community. So there were a lot of opportunities 03:06:17 PM
 15 that were presenting themselves to me at that 03:06:19 PM
 16 point in time. 03:06:22 PM
 17 Q But you resigned in 1998? 03:06:23 PM
 18 A That's correct. 03:06:26 PM
 19 Q When you left the company, were you 03:06:32 PM
 20 paid money? 03:06:34 PM
 21 A No. 03:06:37 PM
 22 Q Did you sign an agreement in connection 03:06:40 PM
 23 with your leaving the company? 03:06:43 PM
 24 A I know I provided a letter of 03:06:48 PM
 25 resignation upon my leaving and I helped the 03:06:50 PM

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1 person who replaced me, Jeff Brewer, to our 03:06:53 PM
 2 larger customers to introduce him and try to 03:06:58 PM
 3 familiarize him with the operation that he was 03:07:05 PM
 4 inheriting, and I don't know if there was a 03:07:08 PM
 5 formal document, there may have been, that I 03:07:14 PM
 6 signed that said that my last day is such and 03:07:16 PM
 7 such, I don't know. My resignation letter 03:07:20 PM
 8 certainly indicated that, but I don't know if 03:07:23 PM
 9 there was another document that was part of my 03:07:25 PM
 10 leaving, my exit. 03:07:29 PM
 11 Q Did you undertake any obligation not to 03:07:31 PM
 12 disparage or reveal secrets of Adams Golf at the 03:07:35 PM
 13 time you left? 03:07:44 PM
 14 A I don't believe so. 03:07:45 PM
 15 Q Where did you go? 03:07:46 PM
 16 A I went to a ski manufacturer back in 03:07:47 PM
 17 New England, which is where I'm from. 03:07:50 PM
 18 Q In what position? 03:07:52 PM
 19 A Vice President of Sales and Marketing. 03:07:53 PM
 20 Q Now, as I get it going back to an 03:07:58 PM
 21 earlier topic, in 1998 and up through the time 03:08:02 PM
 22 that you left Adams, you're not aware of any 03:08:07 PM
 23 retailer or distributor who was ever cut off with 03:08:10 PM
 24 respect to future sales of Adams products for 03:08:15 PM
 25 trans-shipment or grey marketing? 03:08:23 PM

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1	MR. BESSETTE: Objection, misstates	03:08:29 PM	1	Manatee Golf	03:12:00 PM
2	testimony.	03:08:29 PM	2	Q. That was before the IPO first	03:12:07 PM
3	Q. (By Mr. Collins) Let me restate it:	03:08:33 PM	3	developed?	03:12:13 PM
4	Tell me which retailer or distributor,	03:08:35 PM	4	A. Hard for me to put a time line on that.	03:12:14 PM
5	if anyone, who was cut off for trans-shipping	03:08:37 PM	5	Q. Might have been before the IPO?	03:12:18 PM
6	during 1998.	03:08:43 PM	6	A. Could very well have been.	03:12:21 PM
7	A. I hate to sound like a broken record on	03:08:48 PM	7	Q. I believe you also heard reports in	03:12:23 PM
8	this: It was such a long time ago, I don't know	03:08:50 PM	8	Northern Virginia of grey marketing?	03:12:27 PM
9	if or who that would have been.	03:08:53 PM	9	A. Yes.	03:12:31 PM
10	Q. Then, up until -- In 1998 up until the	03:08:59 PM	10	Q. Who was the trans-shipper in that	03:12:31 PM
11	IPO, just to recap, the instances of	03:09:05 PM	11	instance, if you know?	03:12:33 PM
12	trans-shipping that you personally had become	03:09:10 PM	12	A. I don't know.	03:12:34 PM
13	aware of included MVP Sports in New England?	03:09:15 PM	13	Q. Then did you hear reports before the	03:12:35 PM
14	A. Yes	03:09:25 PM	14	IPO of grey marketing or trans-shipping in the	03:12:37 PM
15	Q. And it included sightings of clubs in	03:09:26 PM	15	Pacific Northwest?	03:12:44 PM
16	Boise at Costco, correct?	03:09:33 PM	16	A. The only reference I could make there	03:12:51 PM
17	A. Yes	03:09:37 PM	17	would have been that Costco was based in the	03:12:54 PM
18	Q. And it included several instances or a	03:09:43 PM	18	Pacific Northwest, their corporate headquarters	03:12:57 PM
19	number of instances of clubs appearing at Costcos	03:09:53 PM	19	was based in the Pacific Northwest.	03:13:01 PM
20	in Canada, correct?	03:09:57 PM	20	Q. You recall that we looked at a May 8th	03:13:15 PM
21	A. I only visited a couple of Costcos in	03:09:59 PM	21	memo that you wrote, Exhibit 256. Did you or	03:13:27 PM
22	Canada. If you're talking about me physically	03:10:02 PM	22	anyone ever contact National Clothing or US	03:13:33 PM
23	going into a Costco versus the clubs that were	03:10:09 PM	23	Merchants about, what, if anything, they were	03:13:40 PM
24	alleged to be a Costco.	03:10:14 PM	24	doing about making sales or clubs that ended up	03:13:43 PM
25	Q. But you went to a couple Costcos	03:10:18 PM	25	at Costco?	03:13:47 PM
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1	yourself in Canada where you saw Adams clubs	03:10:20 PM	1	A. If my memory serves me correctly, I	03:13:51 PM
2	being sold before the IPO, correct?	03:10:25 PM	2	believe that we tried to understand more fully	03:13:54 PM
3	A. I would think it was before the IPO.	03:10:30 PM	3	how those clubs were getting to Costco as far as	03:14:00 PM
4	Q. In addition to that, it was Pro Golf	03:10:33 PM	4	these particular entities. Obviously, they would	03:14:03 PM
5	Pro Golf also informed you that they had received	03:10:41 PM	5	know why you're trying to discuss this with him.	03:14:10 PM
6	reports of Costco selling Adams Golf clubs before	03:10:45 PM	6	No conversations took place, to my knowledge,	03:14:14 PM
7	the IPO?	03:10:51 PM	7	with these companies as related to them diverting	03:14:17 PM
8	A. Pro Golf made inquiry as related to our	03:10:54 PM	8	the club over to Costco	03:14:23 PM
9	product in Costco	03:10:59 PM	9	Q. Any conversations with National	03:14:26 PM
10	Q. Now, in addition to what you and I have	03:11:01 PM	10	Clothing or US Merchants as to how they came to	03:14:28 PM
11	just discussed in the last moment, were there any	03:11:03 PM	11	be in possession of the clubs?	03:14:33 PM
12	other reports of trans-shipping, grey marketing	03:11:07 PM	12	A. Again, I don't recall conversations	03:14:36 PM
13	or Adams clubs being sold to Costco or Price Club	03:11:10 PM	13	with these companies.	03:14:40 PM
14	that you were aware of pre IPO?	03:11:16 PM	14	Q. Do you recall an investigation that was	03:14:44 PM
15	A. Not to my knowledge.	03:11:22 PM	15	undertaken by you or someone else?	03:14:47 PM
16	Q. Did you hear reports of trans-shipping	03:11:24 PM	16	A. Right, trying to figure it out and how	03:14:50 PM
17	going on in Florida?	03:11:28 PM	17	we got to the point of got information on this	03:14:53 PM
18	A. I believe there was an account in	03:11:34 PM	18	memo, at this point, my memory escapes me on how	03:14:56 PM
19	Florida that over time we had concern about the	03:11:35 PM	19	we would have done that	03:15:00 PM
20	disposition of those clubs	03:11:43 PM	20	MR. COLLINS: I don't have any more	03:15:04 PM
21	Q. What do you mean by that?	03:11:46 PM	21	questions. I thank you.	03:15:05 PM
22	A. How was he selling those clubs, who was	03:11:49 PM	22	MR. BESSETTE: Just a few questions	03:15:11 PM
23	he selling them to	03:11:52 PM	23		03:15:15 PM
24	Q. Who would that have been?	03:11:55 PM	24	///	03:15:15 PM
25	A. It was an account, if memory serves me,	03:11:56 PM	25	EXAMINATION	03:15:15 PM

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1	BY MR. BESSETTE:	03:15:15 PM	1	MR. BESSETTE: Let me ask it again	03:19:15 PM
2	Q. Grab that document back, the August	03:15:12 PM	2	Q. (By Mr. Bessette) Did you ever see any	03:19:16 PM
3	14th memo from Barney.	03:15:17 PM	3	evidence of double shipping while you were at	03:19:17 PM
4	A. Okay.	03:15:19 PM	4	Adams Golf?	03:19:19 PM
5	Q. Points A through I in Mr. Adams's memo?	03:15:32 PM	5	A. No.	03:19:21 PM
6	A. Yes.	03:15:38 PM	6	Q. Did you ever see any evidence or	03:19:21 PM
7	Q. To you and Rick?	03:15:39 PM	7	otherwise know about any consignment sales while	03:19:22 PM
8	A. Yes.	03:15:40 PM	8	you were at Adams Golf?	03:19:26 PM
9	Q. I believe you recalled talking with Mr.	03:15:40 PM	9	A. At the very beginning of Adams Golf,	03:19:28 PM
10	Adams about the criticism in this memo?	03:15:44 PM	10	before we had an infomercial, before there was a	03:19:31 PM
11	A. Yes.	03:15:47 PM	11	brand, before there was consumer interest in the	03:19:38 PM
12	Q. Is that your recollection?	03:15:48 PM	12	product, there was in isolated cases the	03:19:42 PM
13	A. Yes, that's what I stated.	03:15:50 PM	13	opportunity to provide customers the product on	03:19:46 PM
14	Q. With respect to Letters A through I,	03:15:51 PM	14	consignment.	03:19:49 PM
15	which of those, if any, have merit in your view?	03:15:58 PM	15	Q. When did that change?	03:19:51 PM
16	In other words, which of these criticisms had	03:16:04 PM	16	A. When we established consumer demand for	03:19:56 PM
17	some merit in your view?	03:16:08 PM	17	the product, advertising creating the interest in	03:20:00 PM
18	A. I would say D, to a lesser extent E, H	03:16:26 PM	18	the marketplace for the product	03:20:03 PM
19	and I	03:16:44 PM	19	Q. Do you recall when that was, the	03:20:06 PM
20	Q. Okay. With respect to I, I think you	03:16:57 PM	20	infomercial?	03:20:07 PM
21	already testified to that in response to Mr.	03:17:00 PM	21	A. It was launched in '97, to the best of	03:20:11 PM
22	Collins questions	03:17:02 PM	22	my recollection, May, springish, late spring.	03:20:14 PM
23	A. Yes.	03:17:06 PM	23	Q. Then, on the second page of Exhibit 57,	03:20:34 PM
24	Q. What about H, what was valid about H?	03:17:08 PM	24	Mr. Adams in that third full paragraph says:	03:20:36 PM
25	A. Historically, that could happen.	03:17:16 PM	25	Check July returns and tell me what they'll be	03:20:41 PM
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1	Q. Meaning, commissions were cut?	03:17:21 PM	1	during the rest of the year.	03:20:46 PM
2	A. That's correct	03:17:26 PM	2	Do you recall having discussions with	03:20:48 PM
3	Q. Do you know why they were cut?	03:17:27 PM	3	him about that topic?	03:20:49 PM
4	A. They were cut because Barney had the	03:17:30 PM	4	A. I can't recall specific conversations	03:20:51 PM
5	belief that the sales team should not be overpaid	03:17:36 PM	5	regarding July returns. I know that I believe in	03:20:56 PM
6	for a product that was very rapidly gaining	03:17:42 PM	6	and around this time we used a company that was	03:21:00 PM
7	market share.	03:18:03 PM	7	doing direct consumer sales with the clubs, and	03:21:05 PM
8	Q. And very popular?	03:18:07 PM	8	that was something that was not part of my	03:21:10 PM
9	A. Very popular. The perception was easy	03:18:08 PM	9	jurisdiction. That would have been Walt and	03:21:15 PM
10	to sell.	03:18:17 PM	10	maybe Cindy and Barney may have had a hand in	03:21:19 PM
11	Q. With respect to Item E, what was valid	03:18:18 PM	11	that. I think the company was called Telegolf or	03:21:24 PM
12	about that one?	03:18:20 PM	12	something to that effect. So they were selling	03:21:31 PM
13	A. I think that Craig Parish was	03:18:22 PM	13	the golf club direct to consumers and using what	03:21:33 PM
14	originally an Inside Salesperson. So one person	03:18:28 PM	14	I believe were practices, although normally	03:21:38 PM
15	was promoted out of that group to be able to	03:18:31 PM	15	practiced within the industry of direct sales,	03:21:43 PM
16	manage the group. He was the person that was	03:18:34 PM	16	were practices that encouraged returns. So the	03:21:46 PM
17	chosen which by definition means the others were	03:18:40 PM	17	July time frame, it may very well may have been	03:21:58 PM
18	not chosen. He was new to the job, as any of	03:18:46 PM	18	Q. Was it your understanding these sales	03:22:02 PM
19	them would have been, and I think that he was in	03:18:49 PM	19	by Telegolf had higher returns with them?	03:22:07 PM
20	the learning process of maturing in the job	03:18:54 PM	20	A. Yes.	03:22:35 PM
21	Q. Just to be clear, to reaffirm, you	03:19:01 PM	21	Q. If you can find Exhibit 257. That's	03:22:36 PM
22	never saw any evidence of double shipping	03:19:05 PM	22	your memo of June 2nd. I think you testified	03:22:41 PM
23	occurring while you were at Adams Golf; is that	03:19:08 PM	23	that you wrote this memo.	03:23:06 PM
24	right?	03:19:11 PM	24	A. That's correct.	03:23:09 PM
25	MR. COLLINS: Objection, leading.	03:19:13 PM	25	Q. Tell us, then, when you meant when you	03:23:09 PM

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GREANEY

JAY GREANEY

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: ADAMS GOLF, INC. : CONSOLIDATED
SECURITIES LITIGATION : C.A. NO. 99-371 KAJ
_____X

ORAL DEPOSITION OF JAY GREANEY
Thursday, May 18, 2006

The oral deposition of JAY GREANEY was held at the law offices of Locke Liddell & Sapp, LLP, 1700 Pacific Avenue, Suite 2200, Dallas, Texas, from 10:08 a.m. to 12:45 p.m., before Jamie K. Israelow, a Certified Shorthand Reporter in and for the State of Texas, Registered Professional Reporter, Certified Realtime Reporter and Certified LiveNote Reporter.

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JAY GREANEY

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<p>10:15:37 1 house account or serviced by a -- another division 10:15:43 2 of the company. 10:15:48 3 Q What division was that? 10:15:51 4 A That would have been what was called 10:15:52 5 the -- the big-box retailers. 10:15:56 6 Q That was the name of the division, 10:16:00 7 the big-box retailer division? 10:16:02 8 A I don't know if that was the name of 10:16:03 9 it. I don't recall the actual name, but I know 10:16:06 10 those particular stores were categorized as key 10:16:09 11 accounts or big-box retailers 10:16:11 12 Q Who was in charge of the area of the 10:16:15 13 company dealing with key accounts or big-box 10:16:18 14 retailers in the first half of '98? 10:16:20 15 A The -- I believe it was the vice 10:16:26 16 president of sales. 10:16:28 17 Q Mark Gonsalves? Is that -- 10:16:39 18 A Yes. 10:16:39 19 Q Were there particular accounts in 10:16:44 20 1998 before the IPO that were taken away from you 10:16:51 21 and taken to the big box or national account 10:16:59 22 division? 10:16:59 23 A There -- no, there weren't particular 10:17:02 24 accounts. There was a shifting of -- of</p>	<p>10:19:04 1 based on shipment to accounts, less returns. 10:19:23 2 Q Was your entitlement to commissions 10:19:34 3 or the terms of your commission remuneration 10:19:38 4 reduced to writing? Let me translate that into 10:19:46 5 English away from lawyerese. 10:19:47 6 Was there a document that 10:19:49 7 says: Mr. Greaney, these are the terms under 10:19:52 8 which we'll pay you commissions? 10:19:54 9 A Yes. If I understand the question, 10:19:56 10 there was a commission schedule. 10:20:18 11 Q What were your -- going back a step, 10:20:21 12 what were your accounts in Michigan? Tell me some 10:20:23 13 of the bigger accounts in Michigan, to the extent 10:20:25 14 you can recall. 10:20:27 15 A Karl's Golf Land, King Par. There 10:20:44 16 were several golf courses. Pro Golf. I don't 10:20:55 17 recall many others. 10:20:57 18 Q Now, again, same time period, '98 up 10:21:09 19 through the IPO, describe for me, please, the 10:21:17 20 process from receipt of order to shipment. What 10:21:26 21 steps did you go through? 10:21:31 22 A '98. From when in '98? 10:21:36 23 Q January 1 through July 10 10:21:41 24 A Okay. There -- there would have been</p>
Page 11	Page 13
<p>10:17:06 1 territory, but I -- I didn't ever handle any of 10:17:10 2 the key accounts, so they would not have been 10:17:13 3 taken from me 10:17:13 4 Q I see. So then is it accurate that 10:17:19 5 in 1998 up until the IPO, your territory was 10:17:26 6 Southern California, some parts of Michigan, some 10:17:28 7 parts of New York, all of Utah, and all of Hawaii? 10:17:35 8 A Yes, if I recall. 10:17:38 9 Q Okay. In Hawaii, what were your big 10:17:40 10 accounts in 1998, to the extent that you can 10:17:49 11 recall? What I'm asking: Tell me the two or 10:17:52 12 three or four biggest accounts you had in Hawaii. 10:17:56 13 A That was several years ago. There 10:17:57 14 was one that I recall, Piece of Time; possibly 10:18:13 15 Supreme Golf, and I -- I don't recall the names of 10:18:15 16 the other -- any other accounts. 10:18:18 17 Q Thank you. Okay. Now, let's focus 10:18:32 18 on 1998, January 1 until the IPO in July 1998. 10:18:38 19 During that time, how were you -- what was the 10:18:40 20 basis of your compensation, please? 10:18:43 21 A Salary plus commission. 10:18:54 22 Q How was the commission determined, 10:18:56 23 please? 10:18:56 24 A The commission was based on sales,</p>	<p>10:21:44 1 two processes, because there would have been a PGA 10:21:47 2 trade show, which would have meant that there was 10:21:51 3 an acceptance of orders that were placed by 10:21:59 4 customers at a trade show. And then there were 10:22:01 5 orders that were placed through call-ins from 10:22:07 6 customers, verbal calls, as well as from -- at the 10:22:13 7 time there was an outside servicing group that 10:22:16 8 would have serviced retailers, and they would have 10:22:19 9 either -- called to say: Send a customer clubs. 10:22:23 10 Q Uh-huh. 10:22:23 11 A It was a faith market. 10:22:29 12 Q Forgive me. What does that mean? 10:22:32 13 A What I mean by that is they were 10:22:35 14 verbal orders. 10:22:35 15 Q I see. So on the basis of a verbal 10:22:46 16 order, you would ship? 10:22:47 17 A To a certain degree, yes. There were 10:22:51 18 orders that were placed for immediate delivery, 10:22:54 19 and then there were backup orders, which were 10:22:57 20 considered prebooks for future delivery. 10:23:03 21 Q Are you telling me that for future 10:23:06 22 deliveries, those orders required some sort of 10:23:10 23 writing? 10:23:10 24 A Yes.</p>

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JAY GREANEY

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<p>10:23:10 1 Q Whereas the immediate deliveries 10:23:13 2 entailed somebody calling you up or you calling 10:23:15 3 one of your customers and the customer saying: 10:23:19 4 Send me 10 clubs, and you'd say: Right away, and 10:23:24 5 there would be no purchase order, for example, in 10:23:29 6 that circumstance, that you would receive from the 10:23:32 7 customer? 10:23:32 8 A There were a combination of purchase 10:23:35 9 orders and verbal orders. 10:23:36 10 Q Okay. 10:23:36 11 A So there were orders that were placed 10:23:38 12 for immediate delivery, and then there were orders 10:23:41 13 that were placed for immediate delivery and for -- 10:23:45 14 for future business to guarantee delivery, and I 10:23:50 15 believe that was the -- the terminology that was 10:23:57 16 used 10:23:58 17 Q Which terminology? 10:23:59 18 A Guaranteed delivery is what I recall 10:24:03 19 the company had used in their tactic. 10:24:05 20 Q And guaranteed delivery referred to 10:24:08 21 future orders? 10:24:12 22 A Yes. 10:24:12 23 Q Was there any policy that you were 10:24:15 24 aware of in effect January 1, '98, through July 10</p>	<p>10:25:54 1 Q What do you mean "if it was 10:25:56 2 released"? 10:25:57 3 A Well, the order would have had to 10:25:59 4 have been approved for release through the 10:26:03 5 accounting and credit department. 10:26:21 6 Q Now, after you received a verbal 10:26:28 7 order, did you customarily, January 1 through 10:26:32 8 July 10, '98, send anything in writing to the 10:26:39 9 customer to confirm the order? 10:26:43 10 A No. That -- that was not a -- a 10:26:45 11 policy that was in place, is my understanding. 10:26:49 12 Q Okay. So as far as the customer was 10:26:52 13 concerned, after he placed the verbal order with 10:26:55 14 you, the next communication he received from Adams 10:27:02 15 Golf was delivery of the club? 10:27:09 16 A Yes, in most instances. There were 10:27:12 17 times, as I mentioned, that there were written 10:27:15 18 orders that were generated rarely by a purchase 10:27:18 19 order, but that's accurate. 10:27:22 20 Q Okay. And the purchase order 10:27:24 21 procedure usually was only followed with regard to 10:27:27 22 future delivery or guaranteed delivery orders; is 10:27:30 23 that right? 10:27:35 24 A No. That's not completely right.</p>
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<p>10:24:20 1 at Adams Golf regarding whether a written purchase 10:24:24 2 order was required? 10:24:29 3 A Not that I'm aware of. 10:24:38 4 Q Okay. Let's talk for a moment about 10:24:41 5 situations, January 1 through July 10, '98, in 10:24:45 6 which you received a verbal order. 10:24:47 7 Once you received the verbal 10:24:50 8 order, what was your next step? 10:24:53 9 A The next step would have been to 10:25:00 10 write the order and process that through data 10:25:05 11 entry, to physically hand the -- the order to a 10:25:09 12 data-entry person, who would input the order, and 10:25:12 13 then it would go through the system. 10:25:21 14 Q Through the system at Adams Golf? 10:25:23 15 A Yes. 10:25:23 16 Q And when you say "through the 10:25:26 17 system," you mean that the order would be 10:25:29 18 processed all the way to the shipping dock? Is 10:25:35 19 that what you mean? 10:25:36 20 A Yes. There were steps that the order 10:25:38 21 would have to go through. There was a process 10:25:40 22 where the order was entered, and then it would go 10:25:44 23 through to the accounting department and then 10:25:48 24 through to shipping if it was released.</p>	<p>10:27:37 1 There were times when there were purchase orders 10:27:40 2 that were just according to the way a particular 10:27:45 3 customer placed their orders. At the time, there 10:27:52 4 were not very many written purchase orders, at 10:27:55 5 least in the territory that I was handling. 10:27:59 6 Q I see. Now, you said at the time 10:28:02 7 there weren't many written purchase orders, at 10:28:06 8 least in your territory. Did that change at a 10:28:09 9 subsequent point? Rephrase that, if I may. 10:28:14 10 After July 10th, 1998, until 10:28:17 11 your departure in November 1998, did there come a 10:28:20 12 time when it became more common to use written 10:28:23 13 purchase orders? 10:28:25 14 A Yes, it became more common at the 10:28:30 15 time prior to 1998, there -- there was just a 10:28:35 16 flurry of business and customers were saying: 10:28:39 17 Send me whatever you can get me. 10:28:40 18 Q Sure. 10:28:41 19 A And then as time went on, there was a 10:28:46 20 bit more conservatism, customers were concerned 10:28:50 21 about demand, so they were -- in general, the 10:28:53 22 business was leaning toward purchase orders. I 10:28:59 23 don't know that it was particular to Adams Golf. 10:29:02 24 Q I see. And this change that the</p>

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<p>10:29:06 1 customers began to lean more toward purchase</p> <p>10:29:11 2 orders occurred after the IPO?</p> <p>10:29:13 3 A Possibly. And I can't say that it's</p> <p>10:29:16 4 particular to the IPO. It's possible that it was</p> <p>10:29:19 5 just within the industry as a whole.</p> <p>10:29:21 6 Q I see. But in terms of time when</p> <p>10:29:25 7 this change, leaning more toward purchase orders</p> <p>10:29:28 8 on the part of customers, this change occurred or</p> <p>10:29:31 9 began to occur after July 10th, 1998?</p> <p>10:29:39 10 A I can't say that that's something</p> <p>10:29:41 11 that's concurrent with July 10th, 1998. I just</p> <p>10:29:45 12 know that it happened</p> <p>10:29:47 13 Q The -- the change, customers leaning</p> <p>10:29:50 14 more toward purchase orders, that was a change in</p> <p>10:29:58 15 the customers' practice, as opposed to Adams</p> <p>10:30:02 16 Golf's practice, right?</p> <p>10:30:03 17 A Yes, that's accurate.</p> <p>10:30:04 18 Q Did there come a time during 1998,</p> <p>10:30:06 19 after July 10, when Adams Golf changed its policy</p> <p>10:30:11 20 about accepting verbal orders?</p> <p>10:30:18 21 A I don't recall. I wasn't there very</p> <p>10:30:20 22 much longer after July 10th.</p> <p>10:30:34 23 Q Okay. Now, in -- in taking verbal</p> <p>10:30:42 24 orders before 1998, before July 10, were there any</p>	<p>10:32:28 1 should have asked you this before: Did you do</p> <p>10:32:31 2 anything to prepare for this deposition?</p> <p>10:32:36 3 A I don't understand the question.</p> <p>10:32:37 4 Q Well, you were nice enough to come,</p> <p>10:32:40 5 that's one form of preparation. Did you talk to</p> <p>10:32:43 6 Peg before the deposition about some of the</p> <p>10:32:46 7 subject matter of the deposition and what the</p> <p>10:32:49 8 procedure would be?</p> <p>10:32:50 9 MS. HALL: And I'm going to</p> <p>10:32:51 10 caution the witness to -- you can tell him if we</p> <p>10:32:54 11 talked, but not what we discussed.</p> <p>10:32:56 12 A I just spoke with Peg before with</p> <p>10:32:59 13 regard to the scheduling of the deposition.</p> <p>10:33:03 14 Q (By Mr. Collins) Good. And when did</p> <p>10:33:04 15 that discussion take place?</p> <p>10:33:11 16 A This morning and on one other day</p> <p>10:33:14 17 last week.</p> <p>10:33:18 18 Q Okay. And when you spoke to Peg, was</p> <p>10:33:20 19 there anyone else present besides the two of you?</p> <p>10:33:25 20 A No.</p> <p>10:33:25 21 Q Now, have you met Michelle before</p> <p>10:33:27 22 this morning?</p> <p>10:33:27 23 A No, I haven't</p> <p>10:33:28 24 Q And have you -- have you spoken to</p>
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<p>10:30:47 1 rules, any procedures that Adams Golf provided for</p> <p>10:30:55 2 you, any rules as to what sort of orders to take,</p> <p>10:30:58 3 what sort of orders not to take?</p> <p>10:31:03 4 A There were rules that changed over</p> <p>10:31:05 5 time, and much was based on demand. There --</p> <p>10:31:08 6 there was a lot of demand for the product, and</p> <p>10:31:13 7 there was a time when literally we would just</p> <p>10:31:20 8 accept orders from a customer, and that's what I</p> <p>10:31:29 9 recall. It was just simply a busy time.</p> <p>10:31:31 10 Q Sure.</p> <p>10:31:32 11 A The product was in high demand.</p> <p>10:31:34 12 Q Sure. And that began to change</p> <p>10:31:36 13 before you left Adams Golf, I gather?</p> <p>10:31:41 14 A Yes.</p> <p>10:31:41 15 Q When did that begin to change?</p> <p>10:31:48 16 A It began to change at the time</p> <p>10:31:53 17 when -- there was another company, Orlimar, that</p> <p>10:31:56 18 came into the marketplace with -- with a similar</p> <p>10:32:01 19 product in that fairway wood category, and they</p> <p>10:32:05 20 began to start taking some market share, so it may</p> <p>10:32:09 21 have been toward the end of -- toward the end of</p> <p>10:32:18 22 '97. I don't recall the actual date.</p> <p>10:32:20 23 Q Uh-huh. Okay. Now, something --</p> <p>10:32:26 24 forgive me for changing course for a sec. I</p>	<p>10:33:30 1 Michelle or anybody from the Akin Gump firm before</p> <p>10:33:34 2 this morning?</p> <p>10:33:35 3 A I've spoken with them only to -- to</p> <p>10:33:39 4 understand that there was some sort of a matter</p> <p>10:33:42 5 regarding this</p> <p>10:33:45 6 Q Okay. And when did that -- was that</p> <p>10:33:47 7 one discussion with Akin Gump, or more than one?</p> <p>10:33:53 8 A If I recall, it was two discussions</p> <p>10:33:56 9 Q Okay. Were those over the phone or</p> <p>10:33:58 10 in person?</p> <p>10:33:59 11 A Over the phone.</p> <p>10:34:01 12 Q And Akin Gump has lots of fine</p> <p>10:34:03 13 lawyers. Do you happen to remember if it was</p> <p>10:34:06 14 Michelle Reed or someone else you spoke to at Akin</p> <p>10:34:10 15 Gump?</p> <p>10:34:11 16 A I think I had spoken with Michelle</p> <p>10:34:13 17 and possibly one other lawyer. I don't recall her</p> <p>10:34:16 18 name, though.</p> <p>10:34:16 19 Q Jenny Brannen?</p> <p>10:34:19 20 A Yes.</p> <p>10:34:19 21 Q And during those discussions with</p> <p>10:34:25 22 Jenny Brannen and/or Michelle Reed, did they tell</p> <p>10:34:32 23 you anything about the sorts of questions you</p> <p>10:34:33 24 might be asked at a deposition?</p>

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<p>10:34:35 1 A No</p> <p>10:34:35 2 Q How long were the discussions with</p> <p>10:34:40 3 Jenny and/or Michelle?</p> <p>10:34:47 4 A They were brief, 30 minutes or so.</p> <p>10:34:51 5 Q Did they send you any documents?</p> <p>10:34:52 6 A The only document that I received was</p> <p>10:34:54 7 the actual claim.</p> <p>10:34:56 8 Q The complaint?</p> <p>10:34:57 9 A Complaint, yes.</p> <p>10:34:59 10 Q Okay. Did they tell you anything</p> <p>10:35:00 11 about the complaint?</p> <p>10:35:03 12 A No.</p> <p>10:35:03 13 Q Did they tell you anything about how</p> <p>10:35:07 14 their clients were defending against the</p> <p>10:35:11 15 complaint?</p> <p>10:35:13 16 A No</p> <p>10:35:13 17 Q Did they describe to you what the</p> <p>10:35:15 18 lawsuit was about?</p> <p>10:35:18 19 A To a certain degree. They mentioned</p> <p>10:35:21 20 that there was a -- a class-action suit of some</p> <p>10:35:27 21 kind</p> <p>10:35:27 22 Q And did they tell you what your role</p> <p>10:35:29 23 in the litigation might be?</p> <p>10:35:33 24 A No, not in detail.</p>	<p>10:36:45 1 dramatically, over the course of time</p> <p>10:36:48 2 Q Bad. Bad.</p> <p>10:36:51 3 A Bad, yes.</p> <p>10:36:54 4 Q Now, with regard to commissions, you</p> <p>10:36:57 5 mentioned that in '98 up through July 10 your</p> <p>10:37:02 6 commissions were based on sales, which I</p> <p>10:37:05 7 understood to be shipments less returns. Is that</p> <p>10:37:07 8 right?</p> <p>10:37:07 9 A Yes, that's right.</p> <p>10:37:09 10 Q Now, was there some method by which</p> <p>10:37:13 11 shipments were tracked, that you're aware of?</p> <p>10:37:22 12 A I don't understand the question.</p> <p>10:37:24 13 Q Well, it wasn't a good question.</p> <p>10:37:29 14 Was there some form that you</p> <p>10:37:31 15 needed to fill out to make sure you got paid,</p> <p>10:37:34 16 which after all was something you were entitled</p> <p>10:37:36 17 to? Was there some procedure you followed to make</p> <p>10:37:38 18 sure that all your shipments were recorded and you</p> <p>10:37:40 19 were credited for them?</p> <p>10:37:46 20 A No. There was no procedure. There</p> <p>10:37:47 21 was a commission statement that was generated by</p> <p>10:37:49 22 the company</p> <p>10:37:55 23 Q On what sort of -- how frequently was</p> <p>10:37:58 24 that statement generated?</p>
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<p>10:35:34 1 Q But I do hope they told you you were</p> <p>10:35:37 2 in -- you have no dog in this fight, and they did</p> <p>10:35:39 3 tell you that you're not a plaintiff or a</p> <p>10:35:41 4 defendant?</p> <p>10:35:42 5 A Yes. Yes, I understood that.</p> <p>10:35:44 6 MS. HALL: Are you from Texas?</p> <p>10:35:46 7 You're using -- I guess "dog in this hunt" would</p> <p>10:35:48 8 be the way we would say it.</p> <p>10:35:50 9 MR. COLLINS: It would be</p> <p>10:35:51 10 "ain't got no dog in this deer hunt."</p> <p>10:35:56 11 Q (By Mr. Collins) In the IPO, did you</p> <p>10:35:58 12 buy any stock?</p> <p>10:35:59 13 A Yes, I did.</p> <p>10:36:00 14 Q How much did you buy?</p> <p>10:36:10 15 A I bought either a thousand or 1,500</p> <p>10:36:14 16 shares, and then I bought 2- or 300 shares in the</p> <p>10:36:23 17 aftermarket.</p> <p>10:36:23 18 Q In the IPO, did you pay the IPO price</p> <p>10:36:26 19 of \$16 a share, or was it some reduced number?</p> <p>10:36:29 20 A It was the IPO price.</p> <p>10:36:30 21 Q Do you still own those shares?</p> <p>10:36:33 22 A No, I don't.</p> <p>10:36:37 23 Q Good. When did you sell?</p> <p>10:36:41 24 A Well after the stock had dropped</p>	<p>10:37:58 1 A Monthly basis.</p> <p>10:38:01 2 Q And the commission statement that was</p> <p>10:38:03 3 generated by the company, what information was</p> <p>10:38:07 4 contained in it, please?</p> <p>10:38:10 5 A If I recall, it -- it would contain</p> <p>10:38:13 6 the name of the customer and the shipment date and</p> <p>10:38:23 7 the -- the commission amount, possibly or the</p> <p>10:38:32 8 shipment of dollar amount. I don't recall. The</p> <p>10:38:36 9 company records would reflect that information.</p> <p>10:38:38 10 Q Sure. Did this commission statement</p> <p>10:38:40 11 reflect any returns --</p> <p>10:38:43 12 A Yes.</p> <p>10:38:43 13 Q -- or list any returns?</p> <p>10:38:53 14 Did you receive on a monthly</p> <p>10:38:57 15 basis just one commission statement broken down by</p> <p>10:38:59 16 account, or did you receive a separate commission</p> <p>10:39:03 17 statement for each one of your accounts in which</p> <p>10:39:06 18 there had been activity?</p> <p>10:39:10 19 A I recall there would have been one</p> <p>10:39:12 20 commission statement that would list all of the</p> <p>10:39:15 21 accounts, all of the shipments for the month.</p> <p>10:39:18 22 Q I see. And I presume you received</p> <p>10:39:25 23 this commission statement early in the following</p> <p>10:39:32 24 month?</p>

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<p>11:48:14 1 the defendants in this case.</p> <p>11:48:18 2 MR. COLLINS: That you haven't</p> <p>11:48:19 3 yet or you will not in the future.</p> <p>11:48:22 4 MS. HALL: I will not be.</p> <p>11:48:23 5 MR. COLLINS: Thank you very</p> <p>11:48:24 6 much.</p> <p>11:48:24 7 MS. HALL: Sure.</p> <p>11:48:26 8 Q (By Mr. Collins) Now, you read over</p> <p>11:48:29 9 the termination and release agreement, 815 through</p> <p>11:48:33 10 818, before you signed it, I presume?</p> <p>11:48:54 11 A Yes.</p> <p>11:48:54 12 MR. COLLINS: Are you going</p> <p>11:48:55 13 to -- if I may, Peg, are you going to be paid by</p> <p>11:49:00 14 directors' and officers' insurance.</p> <p>11:49:05 15 MS. HALL: No.</p> <p>11:49:08 16 Q (By Mr. Collins) Okay. Let's look</p> <p>11:49:16 17 at Page 811, if we may. This is not a document</p> <p>11:49:26 18 you prepared, correct?</p> <p>11:49:29 19 A Correct.</p> <p>11:49:30 20 Q Have you seen before today Craig</p> <p>11:49:34 21 Parrish's handwriting?</p> <p>11:49:43 22 A Yes, but I don't recall what it looks</p> <p>11:49:49 23 like.</p> <p>11:49:49 24 Q So you don't know whether Page 811 is</p>	<p>11:51:52 1 please?</p> <p>11:51:53 2 A There were -- there were times when a</p> <p>11:51:58 3 customer would place an order, and then it was</p> <p>11:52:01 4 encouraged to -- to receive a prebook, a backup</p> <p>11:52:06 5 order for future delivery, and those orders were</p> <p>11:52:12 6 collected and -- and either put into the system or</p> <p>11:52:17 7 given to somebody who would enter the order, and</p> <p>11:52:20 8 then there was some criticism of me as a result of</p> <p>11:52:22 9 the fact that those orders were shipped.</p> <p>11:52:27 10 MR. COLLINS: I apologize</p> <p>11:52:29 11 Could you read that last answer?</p> <p>11:52:29 12 (The reporter read back the</p> <p>11:52:54 13 requested text.)</p> <p>11:52:54 14 Q (By Mr. Collins) You say it was</p> <p>11:52:55 15 encouraged to receive a prebook or a backup order.</p> <p>11:53:02 16 Who so encouraged, please?</p> <p>11:53:04 17 A It was encouraged by -- by our sales</p> <p>11:53:08 18 manager and the vice president of sales. If we're</p> <p>11:53:15 19 at a trade show or if we're speaking with a</p> <p>11:53:18 20 customer, there was encouragement to have an order</p> <p>11:53:21 21 placed, but to also receive a backup order, a</p> <p>11:53:22 22 prebook order, in order to guarantee delivery in a</p> <p>11:53:29 23 way that would help to be sure that manufacturing</p> <p>11:53:32 24 built enough product to avoid backorders.</p>
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<p>11:49:52 1 Craig Parrish's handwriting?</p> <p>11:49:54 2 A I don't know.</p> <p>11:49:57 3 Q Page 808, second line, is that his</p> <p>11:50:05 4 signature at the "from" line, his initials?</p> <p>11:50:11 5 A I don't know. I don't recall if</p> <p>11:50:13 6 that's his signature. It's been a long time.</p> <p>11:50:18 7 Q All right. Well, let -- let me,</p> <p>11:50:21 8 without trying to be too unpleasant about all</p> <p>11:50:24 9 this, ask you -- ask you this way: Is it correct</p> <p>11:50:31 10 that Parrish criticized some of your sales</p> <p>11:50:37 11 practices?</p> <p>11:50:38 12 A Yes.</p> <p>11:50:38 13 Q And what, in general, did he say?</p> <p>11:50:42 14 A There -- there were some mistakes</p> <p>11:50:44 15 that were made, and he criticized and asked what</p> <p>11:50:52 16 mistakes had been made and why.</p> <p>11:50:59 17 Q Okay. May I ask what you meant by</p> <p>11:51:00 18 your reference to "mistakes"?</p> <p>11:51:07 19 A There were -- there were some double</p> <p>11:51:12 20 shipments that took place as a result of some --</p> <p>11:51:14 21 some system errors and some lack of demand for the</p> <p>11:51:22 22 product, and there was some criticism placed on me</p> <p>11:51:26 23 as a result of that.</p> <p>11:51:49 24 Q What did you mean by "system errors,"</p>	<p>11:53:50 1 Q The backup or prebook order, was that</p> <p>11:53:53 2 something obtained from the client, from the</p> <p>11:53:56 3 customer?</p> <p>11:53:56 4 A Yes. There were times when they were</p> <p>11:53:58 5 actually obtained by the client, and then there</p> <p>11:54:00 6 were also times when -- at the direction of the</p> <p>11:54:05 7 sales manager or the vice president of sales, we</p> <p>11:54:08 8 were encouraged to request a prebook for the same</p> <p>11:54:14 9 order or a future order for the next month, the</p> <p>11:54:18 10 following months.</p> <p>11:54:19 11 Q I see. In those instances in which</p> <p>11:54:22 12 the -- the customer did not place the prebook</p> <p>11:54:27 13 order, backup order, what procedure did you follow</p> <p>11:54:31 14 when you entered the prebook or the backup order?</p> <p>11:54:51 15 A I didn't enter the order</p> <p>11:55:03 16 Q Who did?</p> <p>11:55:05 17 A Data entry would enter the orders</p> <p>11:55:07 18 Q At whose instruction?</p> <p>11:55:12 19 A At the instruction of whomever it was</p> <p>11:55:15 20 that delivered the orders to data entry.</p> <p>11:55:18 21 Q Who was that?</p> <p>11:55:19 22 A It would have been an administrator,</p> <p>11:55:23 23 someone who collected the orders. It may have</p> <p>11:55:27 24 been a sales manager. It may have been just an</p>

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<p>11:55:29 1 administrative assistant who collected the orders 11:55:33 2 for data entry. 11:55:33 3 Q I see. And the person who collected 11:55:35 4 such orders did so at the instruction of the sales 11:55:38 5 manager or vice president of sales; is that right? 11:55:43 6 A I believe so 11:55:45 7 Q Okay. The vice president of sales, 11:55:53 8 at least until October 1998, was Gonsalves? 11:55:59 9 A Yes. 11:55:59 10 Q Who was the sales manager? 11:56:03 11 A Craig Parrish. 11:56:13 12 Q Okay. In the period during 1998, at 11:56:18 13 least through the IPO, was it the general practice 11:56:24 14 for there to be a backup or prebook order whenever 11:56:28 15 an order was placed? 11:56:51 16 A Yes 11:56:51 17 Q In '98, before -- up until the time 11:56:55 18 of the IPO, how often did the client deliver to 11:57:10 19 you the backup and prebook order? Was it 11:57:15 20 10 percent of the time? 80 percent of the time? 11:57:20 21 And how often was the prebook or backup order 11:57:24 22 generated without receiving a request from the 11:57:32 23 customer? 11:57:32 24 A Typically, more prebook orders were</p>	<p>11:58:54 1 Q (By Mr. Collins) Please 11:59:02 2 A I don't understand the question. 11:59:04 3 Q No problem. I think you said, if I 11:59:06 4 got it correctly, that 10 to 20 percent of the 11:59:09 5 time a prebook order or a backup order was placed, 11:59:14 6 it was placed by the customer, correct? 11:59:19 7 A Prebook orders were -- were placed by 11:59:21 8 the customer. 10 to 20 percent of the time, when 11:59:27 9 a customer placed an order, they would also place 11:59:30 10 a prebook order to back up the order. 11:59:32 11 Q I see. 11:59:32 12 (The reporter read back the 11:59:55 13 requested text.) 11:59:55 14 Q (By Mr. Collins) Then perhaps I 11:59:57 15 misunderstood. 11:59:58 16 Were there some times that 11:59:59 17 prebook or backup orders were not placed by the 12:00:03 18 customer, but nonetheless they were delivered to 12:00:11 19 data entry at the instruction of Parrish or 12:00:16 20 Gonzalves? 12:00:16 21 A Not to my knowledge. The orders were 12:00:23 22 placed. And if there were prebook orders that 12:00:25 23 were placed, those orders were collected by data 12:00:29 24 entry or the sales manager, and I don't know what</p>
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<p>11:57:36 1 placed at the trade shows in January and 11:57:43 2 September. And if I recall, perhaps 10 -- 10 to 11:57:49 3 20 percent of the time, a prebook would be placed 11:57:51 4 just throughout the -- the course of a regular 11:57:57 5 order for immediate delivery being placed. 11:58:03 6 Q Does -- does that mean 80 to 11:58:07 7 90 percent of the time the prebook or backup order 11:58:10 8 would be placed not by the customer, but instead 11:58:16 9 by an administrator or sales manager at Parrish's 11:58:20 10 or Gonzalves' instruction? 11:58:22 11 MS. REED: Objection, assumes 11:58:23 12 facts not in evidence, misstates prior testimony. 11:58:27 13 You can still answer. 11:58:30 14 Q (By Mr. Collins) I don't think 11:58:31 15 that's a good objection, but I can never be sure 11:58:34 16 so let me try again. 11:58:35 17 Does that mean 80, 90 -- 80 to 11:58:39 18 90 percent of the time that a prebook or backup 11:58:42 19 order was entered, it was not at the request of 11:58:51 20 the customer? 11:58:51 21 MS. REED: Objection, 11:58:53 22 misstates prior testimony, assumes facts not in 11:58:53 23 evidence. 11:58:53 24 But you can answer.</p>	<p>12:00:32 1 they did with the orders after that. 12:00:41 2 Q Were there occasions on which prebook 12:00:45 3 or backup orders were presented to data entry when 12:00:49 4 the customer had not placed the prebook or backup 12:01:04 5 order? 12:01:04 6 A I don't know. I know there were 12:01:06 7 times that, as I said, that prebook orders for 12:01:09 8 future delivery were collected and either went 12:01:18 9 into the system or -- I don't know what they did 12:01:20 10 with them. 12:01:22 11 Q When you say "collected or put into 12:01:25 12 the system," you mean put into the system for 12:01:27 13 immediate delivery? 12:01:28 14 A Possibly, yes. There were certainly 12:01:31 15 mistakes that took place. Just as there were 12:01:36 16 orders that were delivered late, there were orders 12:01:41 17 that were delivered early. They were just 12:01:45 18 mistakes. 12:01:45 19 Q Okay. And if I understand correctly, 12:01:48 20 with respect to some of these shipments of prebook 12:01:56 21 orders early, Adams Golf blamed you? 12:02:05 22 A Yes, that's accurate. That's -- 12:02:06 23 that's what I know. I don't know if anyone else 12:02:09 24 was also blamed.</p>

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<p>12:02:11 1 Q Was any explanation given to you as 12:02:14 2 to why you particularly were being blamed for 12:02:20 3 that? 12:02:22 4 A No, no particular explanation. 12:02:25 5 Q Now, the document -- or the Pages 808 12:02:37 6 through at least 810 contain allegations that you 12:02:42 7 engaged in aggressive practices. You mentioned 12:02:47 8 that you were criticized for shipment of prebook 12:02:54 9 orders. Were you criticized for anything else? 12:03:01 10 A No, not to my knowledge. 12:03:07 11 Q A few minutes ago you mentioned that 12:03:11 12 double shipments were made as a result of system 12:03:13 13 errors and a lack of demand for the product. 12:03:15 14 Can you tell me what the 12:03:16 15 connection between a double shipment and a lack of 12:03:19 16 demands is or was? 12:03:24 17 A Yes. There was a -- there was a time 12:03:26 18 when the product was a lot more popular than other 12:03:34 19 times. Earlier, 1997 and up to parts of 1998, 12:03:40 20 there was a time when the customer would just call 12:03:43 21 or -- or a customer would -- or I would call a 12:03:48 22 customer or salespeople would call a customer and 12:03:50 23 the customer would say: Send me as many as you 12:03:54 24 can. And then as the demand for the product</p>	<p>12:05:21 1 times when the product was less popular and, as a 12:05:27 2 result, there were some sell-through issues. 12:05:40 3 Q By "sell-through issues," you mean 12:05:43 4 the customers were not selling out their stock? 12:05:46 5 A Yes. 12:05:46 6 Q And do you mean that under those 12:05:49 7 circumstances the customers didn't want the 12:05:52 8 prebook or backup order, but the order was sent 12:05:58 9 anyway? 12:05:58 10 A Yes, that's possible. 12:06:03 11 Q Now, before the -- before July 10, 12:06:14 12 1998, was there some way in which Adams Golf 12:06:25 13 created a record of the amount or the extent of 12:06:32 14 these backup or prebook orders that were sent too 12:06:35 15 early or when they weren't requested? 12:06:40 16 A Company records would reflect that 12:06:42 17 information. 12:06:42 18 Q What records would I look for that 12:06:44 19 would indicate the amount of the prebook or backup 12:06:51 20 orders sent when they weren't requested? 12:06:55 21 MS REED: Objection, 12:06:56 22 misstates prior testimony. 12:07:00 23 Q (By Mr. Collins) Let me rephrase it. 12:07:01 24 What documents would I look</p>
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<p>12:03:57 1 waned, a lot of customers would say: I didn't 12:04:02 2 order the product. 12:04:04 3 Or there were times when a 12:04:07 4 prebook order was shipped, and the customer hadn't 12:04:11 5 sold through their original order, so they refused 12:04:14 6 an order or -- in that instance, it was considered 12:04:19 7 a double shipment. 12:04:21 8 Q With regard to a prebook or a backup 12:04:24 9 order, was a delivery date specified, generally? 12:04:33 10 A Generally, there was a delivery date, 12:04:35 11 and it was usually one month after the date of the 12:04:41 12 order. 12:04:41 13 Q And I gather -- with respect to the 12:04:45 14 discussion of errors that were made, I gather 12:04:47 15 you're saying that sometimes the delivery was made 12:04:50 16 prior to that date? 12:04:53 17 A Yes. There were some mistakes that 12:04:57 18 happened at that time. 12:04:58 19 Q And do you have an understanding as 12:04:59 20 to why or by whom these mistakes occurred? 12:05:07 21 A I don't know for sure why or how. I 12:05:12 22 don't know that they were intentional. I know 12:05:17 23 that it was just busy and times when the company 12:05:19 24 was trying to meet demand. And then there were</p>	<p>12:07:02 1 for that would indicate instances of such 12:07:05 2 shipments? 12:07:05 3 MS REED: Same objection. 12:07:08 4 Q (By Mr. Collins) Go ahead. 12:07:13 5 A I don't know. I -- it was not 12:07:18 6 under -- within my purview to keep a record, so if 12:07:23 7 the company has records of that information, then 12:07:26 8 they would be in the company's records. 12:07:30 9 Q Now, do you remember -- there's a 12:07:35 10 reference on Pages 4608 through 811 to -- what it 12:07:49 11 says here is: A conversation with Jay. 12:07:52 12 It appears to -- from Page 809 12:07:55 13 to have occurred on October 20th. And then on 12:08:01 14 811, there's a reference to Jay's comments on 12:08:05 15 October 20th. 12:08:09 16 Do you recall whether you, in 12:08:11 17 fact, had a conversation with Parrish on or about 12:08:17 18 October 20th? 12:08:22 19 A I don't recall. 12:08:24 20 Q Now, I know you might not remember 12:08:27 21 the exact date, but I assume this was a fairly 12:08:31 22 unusual conversation, so I gather you recall in 12:08:34 23 general you had a conversation or conversations 12:08:38 24 with Parrish regarding criticisms of your</p>

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12:08:41 1 practices; is that accurate?
 12:08:48 2 A I believe I had answered that
 12:08:49 3 question earlier in testimony.
 12:08:53 4 Q Okay. Forgive me for making you go
 12:08:55 5 through it again. I think you said yes. You said
 12:08:58 6 yes?
 12:08:59 7 A Yes.
 12:08:59 8 Q Okay. Now, apart from the -- the
 12:09:01 9 criticism with regard to errors about shipment of
 12:09:06 10 prebooks or preorders, what other criticisms were
 12:09:11 11 leveled against you, if any?
 12:09:15 12 A I don't recall any other criticisms.
 12:09:21 13 Q And then if you turn to Page 81 I
 12:09:26 14 on -- under the date October 20, where it says:
 12:09:29 15 Jay's comments, and then the first bullet point:
 12:09:31 16 Up until we went public, his practices were
 12:09:37 17 condoned, even supported. Since then, he was
 12:09:40 18 spoken to and he has changed his practices.
 12:09:43 19 Does that refresh your
 12:09:45 20 recollection as to any of the content of your
 12:09:49 21 conversations with Parrish or anyone else?
 12:09:57 22 A I recall a conversation here with
 12:09:58 23 regard to this -- after reading this Sunset
 12:10:03 24 letter -- Sunset Golf letter.

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12:10:09 1 Q Uh-huh.
 12:10:10 2 A I recall being criticized for that
 12:10:19 3 particular letter, and only because it was
 12:10:22 4 encouraged to be aggressive and putting a golf
 12:10:24 5 club in somebody's hand at a trade show. But I
 12:10:27 6 think after there was a change in management, that
 12:10:30 7 was not encouraged, so that's what, I believe,
 12:10:33 8 this is relating to
 12:10:40 9 Q Okay. What other practices, if any,
 12:10:42 10 were condoned or even supported that you were
 12:10:47 11 criticized for?
 12:10:53 12 A I don't -- I don't know of any other
 12:10:55 13 practices that I was criticized for.
 12:11:01 14 Q Were you spoken to at any time about
 12:11:04 15 changing certain practices?
 12:11:10 16 A I don't recall being spoken to about
 12:11:14 17 changing practices.
 12:11:15 18 Q Well, you mentioned putting -- giving
 12:11:17 19 the golf club to the customer as described in the
 12:11:22 20 Sunset Golf letter at Page 812. Any other
 12:11:26 21 practices that you were criticized for before
 12:11:28 22 the --
 12:11:29 23 A No. With regard to this -- this
 12:11:31 24 letter, this would have been at a trade show that

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12:11:34 1 would have occurred just before or -- or -- I
 12:11:37 2 believe just before this time, so I was following
 12:11:39 3 the company's standard of putting a golf club
 12:11:44 4 in -- in a customer's hand.
 12:11:45 5 And then at some point, the --
 12:11:49 6 the policy changed, and I was unaware that the
 12:11:52 7 policy changed, if it had, so I was spoken to in
 12:11:55 8 that regard.
 12:12:04 9 Q Now, the -- the document -- or the
 12:12:07 10 page, 46809, the 10/20/98 date at the top refers
 12:12:15 11 specifically to a conversation among Jay Greaney,
 12:12:21 12 Roger Wilde, and Parrish on October 20, 1998.
 12:12:27 13 Do you recall that
 12:12:29 14 conversation?
 12:12:29 15 MS. REED: Objection, assumes
 12:12:31 16 facts in evidence.
 12:12:32 17 Q (By Mr. Collins) You may answer.
 12:12:34 18 A Can you say the question again? I
 12:12:37 19 didn't understand it.
 12:12:39 20 Q The conversation involving yourself,
 12:12:42 21 Roger Wilde, and Craig Parrish on or about October
 12:12:48 22 20, 1998 --
 12:12:52 23 MS. REED: Same objection.
 12:12:54 24 Q (By Mr. Collins) -- do you remember

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12:12:54 1 it?
 12:12:54 2 A I remember this being a conversation
 12:12:56 3 that took place with regard to a double shipment.
 12:13:04 4 Yes, I remember.
 12:13:05 5 Q Was it a particular double shipment?
 12:13:08 6 A I don't recall.
 12:13:12 7 Q Do you remember whether it was a
 12:13:14 8 double shipment to -- do you remember the customer
 12:13:16 9 involved with regard to the double shipment?
 12:13:21 10 A I don't remember. I don't recall.
 12:13:30 11 Q And in the first paragraph of these
 12:13:31 12 notes on Page 809, there's a -- there's a
 12:13:35 13 reference, to the author's understanding, that
 12:13:41 14 Mark Gonsalves and Craig Parrish had spoken to
 12:13:46 15 you, Jay Greaney, about this issue prior to
 12:13:49 16 October 20th, 1998.
 12:13:51 17 Do you recall that prior
 12:13:54 18 conversation or conversations?
 12:13:58 19 A Yes. As I mentioned earlier, I
 12:14:01 20 recall having a conversation with -- with Mark
 12:14:05 21 Gonsalves or with Craig Parrish regarding a double
 12:14:16 22 shipment, possibly the King Par double shipment,
 12:14:19 23 or if it was considered double shipment. I don't
 12:14:25 24 know

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<p>12:14:25 1 Q Now, in your last answer, when you 12:14:30 2 referred to the King Par double shipment, what 12:14:32 3 were you referring to? 12:14:35 4 A Actually, I was referring to the -- 12:14:37 5 the order that was refused, not a double shipment. 12:14:41 6 Q Now, this first paragraph also 12:14:47 7 contained a reference to an allegation: Padded 12:14:52 8 orders. 12:14:53 9 Do you have any idea what -- 12:14:57 10 or did anybody accuse you of padding orders? 12:15:00 11 A I don't recall being accused of 12:15:02 12 padding orders. 12:15:13 13 Q Now -- 12:15:13 14 (A recess was taken from 12:19:36 15 12:15 to 12:19.) 12:19:37 16 Q (By Mr. Collins) I want you, if 12:19:44 17 you -- I want you, if you would, to -- to read on 12:19:50 18 Page 810 to yourself the first half of the page 12:19:55 19 from: Jay said through "policy" change. 12:20:02 20 If you could just read that to 12:20:34 21 yourself. 12:20:35 22 MS. HALL: Jay, if you feel 12:20:35 23 like you need to read more of it to understand 12:20:37 24 that, please feel free to do so.</p>	<p>12:22:18 1 A No. 12:22:19 2 Q Did they tell you it had to do with 12:22:23 3 allegedly aggressive sales practices? 12:22:27 4 A No. I don't recall ever being given 12:22:29 5 a reason. 12:22:31 6 Q Did you ask? 12:22:35 7 A Yes. 12:22:35 8 Q And what was the response to your 12:22:38 9 question? 12:22:38 10 A The -- the response was: This is a 12:22:45 11 severance agreement, and review it. And at that 12:22:55 12 time, there was a request to -- by John Harris to 12:23:04 13 write this letter from November 5th indicating 12:23:10 14 that I would be happy to help in the transition. 12:23:14 15 Q Who was John Harris? 12:23:18 16 A He was or is the director of human 12:23:28 17 resources. 12:23:28 18 Q Roger Wilde was -- he was a sales 12:23:49 19 manager? 12:23:49 20 A Yes. He was an inside sales rep who 12:23:51 21 became a sales manager just before I left the 12:23:55 22 company. 12:24:02 23 Q Okay. Now, I may have gone over 12:24:03 24 this, and I apologize if that's so, but I believe</p>
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<p>12:20:40 1 MR COLLINS: Please do 12:20:48 2 A Okay. 12:20:48 3 Q (By Mr. Collins) Do you have an 12:20:49 4 understanding what the policy change referred to 12:20:52 5 here is? 12:20:57 6 A No, I don't. I don't recall what is 12:20:59 7 meant by a "policy change." 12:21:05 8 Q Was there a time to your 12:21:06 9 understanding that Barney Adams expressed concern 12:21:12 10 about practices in the inside sales department? 12:21:20 11 A No. I didn't have very much contact 12:21:22 12 with Barney Adams, so I don't know if -- if he had 12:21:25 13 expressed concern. I know that he always seemed 12:21:33 14 pleased with my performance. 12:21:36 15 Q Did either Parrish or Gonsalves or 12:21:45 16 Roger Wilde tell you that Barney Adams had 12:21:47 17 concerns about practices in inside sales? 12:21:54 18 A No, not to my recollection. 12:22:00 19 Q Now, is it accurate that -- that the 12:22:02 20 company asked for your resignation? 12:22:07 21 A They permitted me to resign. 12:22:09 22 Q And did they tell you why they 12:22:13 23 thought you should separate yourself from the 12:22:18 24 company?</p>	<p>12:24:06 1 you said you had seen the Sunset Golf letter 12:24:11 2 before, 812? 12:24:14 3 A I had not seen this letter. I recall 12:24:24 4 that Chip Brewer spoke with me about this, but not 12:24:34 5 to the extent of any shipment, but it was putting 12:24:37 6 a golf club in that particular person's hands, so 12:24:39 7 I had not seen this letter. 12:24:41 8 Q Do you know who James Lyons is? 12:24:48 9 A No. 12:24:48 10 Q Do you recall -- was James Lyons the 12:24:54 11 person into whose hands you put a golf club? 12:24:56 12 A I don't recall. I don't recall 12:25:00 13 Sunset Golf or ever having dealt with them. 12:25:10 14 Q Ohio was not part of your territory 12:25:12 15 as of 1998, correct? 12:25:14 16 A That's correct. 12:25:16 17 Q Nonetheless, to the extent you made 12:25:18 18 sales at a trade show or a convention, you were 12:25:25 19 entitled to a commission for those sales, correct? 12:25:28 20 A I was -- I would have only been 12:25:30 21 entitled to commission for sales that were 12:25:32 22 generated in my territory. So for instance, if an 12:25:38 23 order was placed to Ohio, I would not have gotten 12:25:42 24 a commission for that.</p>

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<p>12:31:51 1 Q Was anyone's approval needed within 12:31:54 2 Adams Golf to charge a credit card? 12:31:57 3 A Yes. 12:31:57 4 Q What was that process? 12:31:59 5 A Credit cards would have to be charged 12:32:01 6 through the credit department. So for instance, I 12:32:05 7 would not be able to process a credit card charge 12:32:08 8 through my doing. 12:32:10 9 Q Were you in a position to instruct 12:32:13 10 the credit department to process the charge? 12:32:18 11 A I was in a position to -- yes, I 12:32:21 12 would be in a position to have an order placed 12:32:23 13 with a credit card, but I could not charge the 12:32:27 14 credit card myself. 12:32:28 15 Q Now, in the third bullet point, 12:32:31 16 there's a reference to: As early as June, your 12:32:34 17 clubs were for sale in Costco for less than my 12:32:37 18 wholesale price. 12:32:39 19 I gather it occurred from time 12:32:41 20 to time that customers told you that they were 12:32:49 21 aware that clubs were being sold at Costco? 12:32:53 22 A Yes. 12:32:56 23 Q Do you have any reason to doubt the 12:32:58 24 accuracy of this statement that: As early as</p>	<p>12:36:06 1 consignment sales at Adams Golf. Do you know what 12:36:09 2 a consignment -- let me -- let me rephrase that 12:36:12 3 I don't mean a consignment sale 12:36:14 4 There have been allegations 12:36:15 5 that Adams Golf made shipments, recorded them as 12:36:19 6 sales, even though there was an unlimited right of 12:36:24 7 return. Are you familiar with those allegations? 12:36:26 8 A Yes. 12:36:26 9 Q Did it occur? 12:36:30 10 A Not to my understanding of 12:36:35 11 consignment. My understanding of consignment is 12:36:39 12 that, as it relates to the golf business, would be 12:36:41 13 that a customer would just simply pay for product 12:36:44 14 when it was sold, and there was always a -- an 12:36:50 15 understanding that the company would stand behind 12:36:51 16 the product because they were confident that the 12:36:56 17 quality and the sell-through was going to be 12:36:56 18 there 12:37:01 19 So customers always understood 12:37:03 20 they would receive an invoice and they would have 12:37:06 21 to pay for the product, but if they couldn't sell 12:37:08 22 it, then we would accept or the company would 12:37:11 23 accept the product back as a return and credit 12:37:14 24 them.</p>
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<p>12:33:01 1 June, your clubs were for sale in Costco for less 12:33:04 2 than my wholesale price, in the vicinity of 12:33:12 3 Manalapan, New Jersey? 12:33:17 4 A No. I recall that there was an issue 12:33:19 5 with Costco, so -- and it was a nationwide issue, 12:33:23 6 so that would include Manalapan, New Jersey. 12:33:28 7 Q And this was a reference to June. It 12:33:31 8 was a nationwide issue as of June 1998? 12:33:42 9 A Yes. 12:33:42 10 Q I want to take a break, if we may. 12:33:42 11 (A recess was taken from 12:35:17 12 12:33 to 12:35.) 12:35:17 13 Q (By Mr. Collins) The termination and 12:35:18 14 release agreement at 815 through 818, have you 12:35:26 15 abided by the terms of this agreement? 12:35:34 16 A Yes, as far as I know. 12:35:35 17 Q And that's -- has it been something 12:35:38 18 you have striven to do, to abide by the terms of 12:35:42 19 this agreement? 12:35:48 20 A Yes. I haven't made any effort 12:35:51 21 either way to do anything other than what I would 12:35:55 22 normally do, so it hasn't been an issue, for me at 12:36:03 23 least. 12:36:04 24 Q There have been allegations of</p>	<p>12:37:16 1 Q And that would occur in situations in 12:37:19 2 which the customer was unable to sell the product; 12:37:21 3 is that right? 12:37:22 4 A Yes. And it was really only early on 12:37:25 5 in the company, when there was really not enough 12:37:31 6 demand for anyone to even accept the product in 12:37:34 7 their store 12:37:38 8 Q Now, we have also heard about -- 12:37:41 9 Hawaii was your territory in '98, correct? 12:37:47 10 A Yes. 12:37:47 11 Q Are you aware of allegations that 12:37:49 12 there were 600 clubs sent to a customer -- 600 or 12:37:54 13 more clubs sent to a customer in Hawaii in '98 12:37:57 14 that were returned? 12:37:59 15 A No, I don't recall that ever 12:38:02 16 happening. 12:38:03 17 Q Did you have any customers in Hawaii 12:38:05 18 who lodged complaints about you or Adams Golf? 12:38:11 19 A Not to my knowledge. 12:38:17 20 Q What was the procedure when clubs 12:38:19 21 were returned? Were you informed, generally? 12:38:26 22 A If -- if a club was going to be 12:38:28 23 returned, there would have been a return 12:38:32 24 authorization number that was issued by the</p>

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JAY GREANEY

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<p>12:38:33 1 customer service department. So yes, there were</p> <p>12:38:36 2 times when I would be informed.</p> <p>12:38:38 3 If a product was refused, then</p> <p>12:38:40 4 I would be informed when the product was received</p> <p>12:38:45 5 from the company.</p> <p>12:38:46 6 Q I see. You mean when it was received</p> <p>12:38:47 7 back from the customer?</p> <p>12:38:49 8 A Yes.</p> <p>12:38:49 9 Q Are you aware of any situation in</p> <p>12:38:52 10 which clubs sent to a customer in Hawaii were</p> <p>12:38:58 11 refused?</p> <p>12:38:58 12 A I'm not aware of any -- any</p> <p>12:39:04 13 specifics.</p> <p>12:39:04 14 Q What are you aware of?</p> <p>12:39:05 15 A I know that there -- it's possible</p> <p>12:39:08 16 that there could have been a mistake, a</p> <p>12:39:13 17 misshipment of individual clubs, but I'm not aware</p> <p>12:39:17 18 of a -- there isn't anything that I specifically</p> <p>12:39:23 19 recollect.</p> <p>12:39:23 20 Q What do you mean by a mistake in the</p> <p>12:39:25 21 shipment of individual clubs to Hawaii?</p> <p>12:39:28 22 A It's possible that there could have</p> <p>12:39:30 23 been a -- a club that was tagged for a particular</p> <p>12:39:34 24 customer in a store, and -- and the customer --</p>	<p>12:41:07 1 also reduced by clubs that were -- were refused?</p> <p>12:41:14 2 A Yes. They were -- if the clubs were</p> <p>12:41:17 3 refused, that would be considered a return,</p> <p>12:41:19 4 unless -- unless they were reshipped and accepted.</p> <p>12:41:25 5 MR. COLLINS: I have no more</p> <p>12:41:27 6 questions now, and I thank you again for your</p> <p>12:41:29 7 patience.</p> <p>12:41:29 8 MS. REED: And I only have a</p> <p>12:41:30 9 few questions.</p> <p>12:41:30 10 EXAMINATION</p> <p>12:41:33 11 BY MS. REED:</p> <p>12:41:33 12 Q I'm sure you answered this in the</p> <p>12:41:35 13 beginning, but I don't have it in my notes, so I</p> <p>12:41:38 14 just wanted to ask you: What type of customers</p> <p>12:41:40 15 did you sell clubs to? You were an inside</p> <p>12:41:44 16 salesperson. Who did you sell your clubs to?</p> <p>12:41:46 17 A To golf courses, golf course</p> <p>12:41:55 18 retailers, typically single stores or small</p> <p>12:41:59 19 regional outlets that had less than 10 stores.</p> <p>12:42:09 20 Q When are the trade shows that happen</p> <p>12:42:11 21 in golf?</p> <p>12:42:14 22 A January and September. I don't know</p> <p>12:42:23 23 if they still have a September trade show, though.</p> <p>12:42:26 24 Q Did you ever prebook orders that were</p>
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<p>12:39:38 1 the consumer didn't want the product, so the store</p> <p>12:39:42 2 refused the product, something like that. But I'm</p> <p>12:39:44 3 not aware of any -- any particulars.</p> <p>12:39:49 4 Q I gather in your last couple of</p> <p>12:39:51 5 answers you were referring to a recollection you</p> <p>12:39:53 6 have of something that happened with regard to</p> <p>12:39:58 7 Hawaiian customers?</p> <p>12:40:04 8 A Yes. I just recall that there was --</p> <p>12:40:07 9 there may have been because Hawaii is a tourist</p> <p>12:40:10 10 area. I recall that there were a couple of</p> <p>12:40:14 11 instances where someone may have ordered --</p> <p>12:40:17 12 special-ordered a club at a store and then they</p> <p>12:40:20 13 didn't want the club, so that product was returned</p> <p>12:40:23 14 or refused because they were not on the island any</p> <p>12:40:27 15 longer, something like that. That's just</p> <p>12:40:32 16 something that I recall.</p> <p>12:40:33 17 Q How did you learn about that instance</p> <p>12:40:35 18 or these instances?</p> <p>12:40:37 19 A Typically, it would be from either a</p> <p>12:40:39 20 report that was generated -- usually a report that</p> <p>12:40:44 21 would be generated on a commission statement, or I</p> <p>12:40:46 22 may be informed by customer service</p> <p>12:41:00 23 Q You mentioned that your commissions</p> <p>12:41:02 24 were reduced by returns. Were your commissions</p>	<p>12:42:27 1 not ordered by a customer?</p> <p>12:42:35 2 MR. COLLINS: Vague and</p> <p>12:42:38 3 ambiguous</p> <p>12:42:38 4 A As I mentioned earlier, there were</p> <p>12:42:41 5 orders that were -- that were prebooked at trade</p> <p>12:42:46 6 shows as a backup to a current order, so the</p> <p>12:42:51 7 answer would be no.</p> <p>12:42:56 8 Q (By Ms. Reed) Were you aware of</p> <p>12:42:57 9 anyone at Adams Golf that prebooked orders that</p> <p>12:43:00 10 were not ordered by the customer?</p> <p>12:43:04 11 A No, I don't know.</p> <p>12:43:07 12 Q And in 1998, did you ever sell clubs</p> <p>12:43:11 13 on consignment?</p> <p>12:43:15 14 A No, I had never sold clubs on</p> <p>12:43:20 15 consignment.</p> <p>12:43:20 16 MS. REED: That's all I have.</p> <p>12:43:20 17 MR. COLLINS: A couple of</p> <p>12:43:20 18 follow-ups.</p> <p>12:43:20 19 FURTHER EXAMINATION</p> <p>12:43:25 20 BY MR. COLLINS:</p> <p>12:43:26 21 Q Prebooking occurred not just with</p> <p>12:43:29 22 regard to trade show orders, correct?</p> <p>12:43:31 23 A That's correct.</p> <p>12:43:31 24 Q It occurred in other instances as</p>

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